Advance pricing agreements
The concept and its implementation in Swedish tax law

Degree Project – Business Administration
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The authors of this thesis concerning the concept of advance pricing agreements are Maria Alm and Helena Ehrstedt. Maria Alm and Helena Ehrstedt have each respectively contributed with 50% to the writing of this thesis.

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Abstract

Transfer pricing (TP) has for a long time been an important tax issue, however it is only within the past decade that it has gotten the attention it deserves. This since more and more corporations becomes globalized. When setting a TP within a multinational enterprise (MNE) it is important to consider the arm’s length principle. The reason for this is that all countries, involved in an internal transaction, are entitled to their fair share of tax revenues. The principle implies that when performing a transaction within a MNE, the price used shall be set on the same circumstances as if the transaction was performed between independent actors. Corporations which do not set their TPs in accordance with the arm’s length principle face the risk of adjustments and future audits.

Setting a TP, which is in line with the arm’s length principle is, however, not an easy task, therefore the subject of advance pricing agreement (APA) has emerged. APA has existed since the middle of the 1980’s when it was first implemented in Japan. However, it was as recent as last year, 1st of January 2010, that a legislation concerning APA was implemented in Swedish tax legislation. The legislation implies that corporations which are a part of a MNE can apply for a binding agreement at the Swedish tax authority regarding future TP. This opportunity will provide for a foreseeable tax future.

Due to this recent implementation of APA legislation in Sweden, we have chosen to conduct a cross-country analysis concerning regulations of APA, using countries which have had APA legislation for a substantial amount of time. The different countries which legislations we have studied in this thesis are Germany, the Netherlands, Sweden and the U.S. The purpose with this thesis is to examine if the
Swedish legislation concerning APA will provide any advantages for Swedish MNEs. A qualitative research method with the focus on an abductive research approach has been used for this thesis. The abductive approach consists of both deductive and inductive research approaches. The deductive approach is used to answer our research questions and the inductive approach is used to answer the purpose with our thesis. The purpose of this thesis consists of two research questions, what the Swedish APA legislation implies and are there any differences between the Swedish APA legislation and other countries’ APA legislations.

After analyzing this new Swedish legislation and performing the cross-country analysis we have come to the conclusion that in general APAs provides substantial benefits for Swedish corporations. With the main advantages being the increased predictability and the reduced administrative burden concerning TP issues. In order for the Swedish legislation to be fully beneficial for the corporations it is, however, in need of some adjustments. If adjustments to the legislation are made we conclude that APAs will only provide benefits for Swedish corporations.
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<td>APA</td>
<td>Advance pricing agreement</td>
</tr>
<tr>
<td>BFN</td>
<td>Bokföringsnämnden</td>
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<tr>
<td>CUP</td>
<td>Comparable uncontrolled price method</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUJTPF</td>
<td>European Union Joint Transfer Pricing Forum</td>
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<tr>
<td>IAS</td>
<td>International Accounting Standards</td>
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<td>IASB</td>
<td>International Accounting Standards Board</td>
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<td>IASC</td>
<td>International Accounting Standards Committee</td>
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<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>IFRS</td>
<td>International Financial Reporting Standards</td>
</tr>
<tr>
<td>IL</td>
<td>Inkomstskattelag</td>
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<tr>
<td>IRC</td>
<td>Internal Revenue Code</td>
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<td>IRS</td>
<td>Internal Revenue Service</td>
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<td>MAP</td>
<td>Mutual agreement procedure</td>
</tr>
<tr>
<td>MKSR</td>
<td>Mellankommunala skatterätten</td>
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<tr>
<td>MNE</td>
<td>Multinational Enterprise</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<tr>
<td>OECD model</td>
<td>OECD Model Tax Convention on Income and Capital tax convention</td>
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<td>OECD TP guidelines</td>
<td>OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>Prop.</td>
<td>Proposition</td>
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<td>PSM</td>
<td>Profit split method</td>
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<td>RPM</td>
<td>Resale price method</td>
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<tr>
<td>RFR</td>
<td>Rådet för finansiell rapportering</td>
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<td>RR</td>
<td>Redovisningsrådet</td>
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<td>RÅ</td>
<td>Regeringsrättens årsbok</td>
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<tr>
<td>SAC</td>
<td>Supreme Administrative Court</td>
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<td>SASB</td>
<td>Swedish Accounting Standard Board</td>
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<tr>
<td>SME</td>
<td>Small and medium sized enterprise</td>
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<td>TNMM</td>
<td>Transactional net margin method</td>
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<tr>
<td>TP</td>
<td>Transfer pricing/transfer price/transfer prices</td>
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<td>TPM</td>
<td>Transfer pricing method</td>
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<tr>
<td>U.S.</td>
<td>United States</td>
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<td>English</td>
<td>Swedish</td>
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<tr>
<td>Accounting Act</td>
<td>Bokföringslag</td>
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<td>Advance pricing agreement</td>
<td>Prissättningsbesked</td>
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<td>Annual Reports Act</td>
<td>Årsredovisningslag</td>
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<td>Arm’s length principle</td>
<td>Armlängsprincipen</td>
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<td>Comparable uncontrolled price method</td>
<td>Marknadsprismetoden</td>
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<td>Contribution analysis</td>
<td>Bidragsmetoden</td>
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<td>Cost plus method</td>
<td>Kostnadsplusmetoden</td>
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<td>Income Tax Act</td>
<td>Inkomstskattelag</td>
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<td>Intermunicipal law of taxation</td>
<td>Mellankommunala skatterätten</td>
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<td>Profit split method</td>
<td>Vinstfördelningsmetoden</td>
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<td>Resale price method</td>
<td>Återförsäljningsprismetoden</td>
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<td>Residual analysis</td>
<td>Restvärdemetoden</td>
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<tr>
<td>Supreme Administrative Court</td>
<td>Regeringsrätten</td>
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<tr>
<td>Swedish Accounting Standard Board</td>
<td>Bokföringsnämnden</td>
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<tr>
<td>Swedish tax authority</td>
<td>Skatteverket</td>
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<td>Tax Assessment Act</td>
<td>Taxeringslag</td>
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<tr>
<td>Tax convention</td>
<td>Skatteavtal</td>
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<tr>
<td>Transactional net margin method</td>
<td>Nettomarginalmetoden</td>
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<tr>
<td>Transfer pricing</td>
<td>Internprissättning</td>
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<td>Transfer pricing method</td>
<td>Prissättningssmetoden</td>
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I Introduction

1.1 Background

The subject of transfer pricing (TP) has recently become a more up-to-date issue in the world of business, since more and more enterprises become globalized (Adams, Graham and Andersen, 1999). Alongside the growing globalization of businesses, the international trade and the global market, the importance of TP has increased. Due to this increasing consideration to TP, Organization for Economic Co-operation and Development (OECD) has published a series of guidelines, rules and regulations. This puts pressure on the multinational enterprises (MNEs) to follow the arm’s length principle (Lymer and Hasseldine, 2002). The arm’s length principle is an international standard, used when setting prices on transactions performed within MNEs, which is based on the price used for transactions conducted between unrelated corporations (Mehafdi, 2000). About 70 percent of all global transactions, are performed within MNEs (Skatteverket, 2010).

TP is an area that touches upon both business administration and tax law, which is a predominant reason why it is chosen as a topic. That a TP, which is the price used for transactions performed within an MNE, should be set according to the arm’s length principle has been known for a long time, and it has been a part of Swedish law since 1928 (KPMG, 2011). However the method of setting a price to this arm’s length principle is another matter. There are different ways of deciding on a TP. OECD has two different types of methods that they recommend for setting a TP, one is the traditional transaction methods and the other one is the transactional profit methods. The first type contains three different ways of going about when setting a TP, comparable uncontrolled price method (CUP), resale price method (RPM) and cost plus method. The second one contains two different ways, profit split method (PSM) and transactional net margin method (TNMM) (OECD TP guidelines, 1995). These methods are further explained in chapter 5. One predominate reason for why countries have legislation for how a TP should be set is to ensure that the right amount of taxes are paid in the right country. When a Swedish corporation which is a part of a MNE
does not set its prices according to the arm’s length principle then the Swedish tax agency will intervene and make an adjustment of the result (SFS (1999:1229))

In January 2010 a new legislation was implemented in Sweden, concerning advance pricing agreements (APA). This new legislation implies that a corporation can apply, to the Swedish tax authority, for an APA (SFS (2009:1289)). An APA is a way to provide for a foreseeable future for MNEs, for a period of three to five taxation years (Prop. 2009/10:17). The concept of APA is explained in chapter 6 and the APA regulations in different countries are presented in chapter 7. However, APA is not a new subject, it has existed for several years in other countries, for example in the United States (U.S.) which implemented the legislation in 1991 (Prop. 2009/10:17).

1.2 Problem

This new Swedish legislation implies that MNEs can apply for an APA of TP. Usually such an application is handed in to the tax authorities of each respective country. The legislation’s purpose is to make TP easier for MNEs. Since the APA program is a new legislation in Sweden it is difficult to conclude if it is an efficient way to solve TP issues. A comparison between countries in which the APA program has exist for several years, can provide for a potential prediction to the progress of APA in Sweden. The countries, which are studied, are Germany, the Netherlands and the U.S. To set a TP might imply difficulties for the MNEs, since there are several methods to choose from and even if one of them is applied, it might still be incorrect. The APA program is expected to provide a solution to TP issues for Swedish MNEs.

As mentioned in the background section of this chapter there are five different methods to use when setting a TP, and in some cases the corporation has to make some adjustments of the price. To avoid an adjustment of TP MNEs can make use of an APA program, however the process around APA may be time-consuming and the MNEs have to be collaborative since they have to co-operate with the tax authority during the whole process (prop. 2009/10:17). Even if adjustments of TP might be needed by the MNEs, an APA will secure that there is no adjustment needed of the TP in future audits (Norell and Billgert, 2010).
1.3 Purpose and research questions

The purpose of this thesis is to examine the implementation of the APA legislation in Sweden by making cross-country analyses. Specifically the following question is answered within the scope of this thesis.

*Will the Swedish legislation concerning advance pricing agreements provide advantages for Swedish MNEs concerning the issues with transfer pricing?*

The purpose consists of two research questions which are analyzed throughout this thesis.

1) What does Swedish APA legislation imply?
2) Are there any differences between the Swedish APA legislation compared to the Dutch, German and U.S. APA legislations?

1.4 Delimitation

Since the subject of TP touches upon several different aspects and angles, to narrow the span of the thesis it will focus on Swedish APA legislation. The predominant reason for why the focus lies on the Swedish legislation is that it is a newly implemented legislation and not much examination concerning this legislation has been done. However, a comparison with other countries’ legislations around APA will be done. The reason for this is that, as mentioned, the Swedish legislation is fairly new and might be in need of some adjustments, which can be found by examining the APA legislation in countries which have had their legislation for a sufficient amount of time. Legislations regarding the bookkeeping of what TP method that has been used are found in IAS/IFRS, Swedish GAAP and in Swedish bookkeeping legislation, and therefore these regulations are examined to see if the APA can ease these bookkeeping demands.

1.5 Outline

*Chapter 2*  
Chapter 2 presents the methodology and the chosen method for this study. Reasons explaining the chosen method is presented in this chapter.
Chapter 3 provides the definitions and the development of TP. It also contains the Swedish accounting legislations and Swedish GAAP, which are important to consider too see if they contain any demands on bookkeeping for TP. Some Swedish MNEs have to follow the IAS/IFRS standards and therefore these are further examined in this chapter.

Chapter 4 In chapter 4, the arm’s length principle is introduced together with the importance of this principle, further the pros and cons of the principle are presented.

Chapter 5 According to the guidelines of OECD, there are five different methods to use when setting a TP and these methods are explained in chapter 5.

Chapter 6 In chapter 6 the concept of APA and its pros and cons is introduced. Also the history and reasons for the implementation of APA are explained.

Chapter 7 It is in chapter 7 where the legislation regarding APA in Germany, the Netherlands, Sweden and the U.S. are examined. The guidelines published by the OECD and EU regarding APA are also presented here, this since most countries use these guidelines as a blueprint for their own APA legislations.

Chapter 8 Our analysis is presented in chapter 8, which contains a comparison of the APA legislation in the examined countries. Further the fact if advantages outweigh the disadvantages is presented in this chapter. What we expect that the new legislation will imply for Swedish MNEs is presented as well.

Chapter 9 Chapter 9 is where the conclusion of our thesis is presented. It will more specifically answer the purpose with our thesis. Will the Swedish legislation concerning advance pricing agreements provide advantages for Swedish MNEs concerning the issues with transfer pricing?
2 Method

2.1 Research approach

Using a qualitative approach when writing this thesis means that all data used is non-numeric and has not been quantified (Saunders, Lewis and Thornhill, 2009). Qualitative methodology, unlike quantitative methodology, will try to clarify the characters or attributes of a specific phenomenon. When using quantitative method on the other hand, it is to affirm the presence or frequency of a phenomenon (Widerberg, 2002). The qualitative method includes both deductive and inductive approaches (Saunders et al., 2009). When combining the two approaches it is known as an abductive research approach (Patel and Davidsson, 2003). The deductive approach means that existing theory will be analyzed in order to fulfill the purpose of the thesis. Inductive research approach on the other hand is when the reality is explored in order to build a theory. This thesis will apply both approaches, however, the deductive will be used more predominantly than the inductive. The deductive approach will be used to analyze the two research questions of this thesis, since data concerning these questions already exist. This approach will be used in the way that we will gather information and theories from different authors that will be presented in the theoretical framework. As mentioned, the theoretical framework will also consist of the inductive approach, this through generating data and analyze this to generate theory (Saunders et al., 2009). This is used when analyzing the purpose of this thesis.

2.2 Data collection and analysis of secondary data

Making international comparisons, such as that between different countries’ legislations, using secondary data can be considered as the main resource, which in this case is an efficient way of collecting data. Secondary data is data that has already been gathered by other authors for another purpose. Primary data is also a possible method, which implies for example interviews, questionnaires and government publications (Saunders et al, 2009). We have used primary data in the form of government publications, or more specifically in the form of national legislations, when analyzing the legislation of the countries examined in this thesis.
It exist different types of secondary data, documentary- and survey-based secondary data and multiple-source secondary data. Documentary secondary data contain both written and non-written materials. Written materials include data such as notices, reports to shareholders and newspapers and non-written materials include data such as video recordings, drawings and corporations’ databases (Saunders et al., 2009). One reason for why this type of secondary data is not included in our thesis is that there is a strong secrecy regarding the documents included in an APA process. This makes it hard to find any company based conclusions regarding APA.

When using data that is collected by using a survey strategy, which is most often based on questionnaires that have already been analyzed for their original purpose, it is referred to as survey-based secondary data. The data will be collected from one of three distinct sub-types of survey strategies, censuses surveys, continuous and regular surveys and ad hoc surveys. Ad hoc surveys are known to be more specific in their issue and are usually one-off surveys, such surveys can include governments’ surveys and corporations’ surveys (Saunders et al., 2009). These types of surveys, with a focus on ad hoc surveys, have been useful to us in the sense that we could examine the outcome of implying an APA program. With such outcomes we mean the number of applications, and potential satisfactions after the issuing of an APA in other countries.

Multiple-source secondary data is the third and final type of secondary data. This type can be based on documentary or on survey secondary data or it can be a mix of the two. The key factor of this type of secondary data is that several data sets have been united to form another data set before it is accessed by the researcher. Multiple source secondary data can be contained of both area based and time-based data, such as books, journals and government publications, and industry statistics and reports. Area based data are formed if the different sources combined arise from the same geographical area, whilst time-based data is based on the comparison of variables from the same survey or different surveys that have been repeated over a period of time (Saunders et al., 2009). When gathering information to our thesis we have used multiple source data, with a focus on the area based data. The reason for this being that the information needed for this thesis could easiest be gathered by the usage of books, articles and different government publications. The reason for why we have used this
type of secondary data is due to the lack of availability of English translations of different national APA legislations. Therefore we have chosen to complement the legislation with scientific articles and books. We have used government publications from the EU and OECD, to get a better understanding of the background to European APA legislations.
3 Transfer pricing

3.1 What is transfer pricing?

The definition of TP which is given by the OECD is that TP is the price used for transfers of goods, services and intangibles within MNEs (OECD TP guidelines, 1995). TP is defined by the Swedish tax authority as the prices which are used for border-crossing transactions performed between related parties (Skatteverket, 2010).

The first research concerning the subject of TP started with the seminal article that is written by Hirshleifer in 1956 and ever since then the research within the subject of TP has expanded widely. Hirshleifer’s article can be said to be the marking of the beginning of both corporations and academic concern within the subject of TP (Borkowski, 2001). According to Hirshleifer (1956) the problem of TP is important due to that such prices affect, the rate of return on investment by which each division is judged, the level of activity within divisions and the total profit that is achieved by the firm as a whole.

TP is a subject that has received attention during the recent years, this can be shown by the fact that during 1998 only five countries around the world had regulations concerning TP and demands of documentation of TP in their legislations. Only seven years later this number had risen to approximately 40 countries which had corresponding regulations (Riley and Ingram, 2008). One reason for why TP has gotten this attention during the recent decades even though it always has existed is that the influence and penetrating power of MNEs has increased drastically during the same time. Estimations have been made that somewhat around 70 percent of all trades around the globe is between businesses in relationship (Skatteverket, 2010). There are several reasons to the increasing growth in the world trade and why TP became an important issue, MNEs desire to expand their production by taking cheaper labor costs into account and the increased demands from lesser developed countries for wider ranges of goods and services from more developed countries. Another factor behind this expansion is the universal increase in the use of technology, especially computer systems that have resulted in a vast array of information being accessible in seconds (Adams et al., 1999).
There are mainly three reasons why corporations pay much attention to TP compliance, these are, the risk of double taxation, risk of significant consequences, both financial and reputational, in the case of non-compliance and the potential penalties (Cools and Slagmulder, 2009). Double taxation is a big risk of using TP, this since corporations are forced to follow not only the taxation regulation in their home country but also the regulation in the host country. These two regulations are most likely different and might therefore also be conflicting with each other (Eden, Dacin and Wan, 2001). One example on how double taxation can be a risk is that not all countries that the same business operates in, has the same tax rate. Therefore some associated businesses might agree on prices on another basis besides the arm’s length principle. This can be done solely to shift profits from a high-tax jurisdiction, such as Italy, Malta, Germany and Norway (based on corporate taxes during 2009), to a low-tax jurisdiction, such as Cyprus, Bulgaria, Estonia and Latvia (based on corporate taxes during 2009), and losses in the opposite direction. However, such manipulations of TP are constrained by tax regulations (Borkowski, 1997). Due to the risk of decreased tax incomes, governments of high tax jurisdictions have formulated new tax laws to make tax manipulations more difficult to achieve (Halperin and Srinidhi, 1996). TP used on transactions performed between different parts of a MNE which are located in the same country, does most often not imply any specific problems. This since most problems of TP arises due to cross-border transactions, such as double taxation and non-taxation.

Due to this problem tax authorities can perform unilateral adjustments of the TP to ensure that their country get what they consider to be their fair share of tax revenues (Terra and Wattel, 2008). If a business is practiced in more than one country and the different parts of the business are strongly integrated, than it can generate national difficulties when the taxable result shall be finalized. This is so since the taxable result shall be finalized in a way that contributes to a fair allocation between the concerned countries. Due to this it is desirable that the tax authorities develop a well functioning co-operation and a mutual vision on the TP area to prevent from unnecessary conflicts between the concerned countries. By doing so each concerned country can practice their right to tax the profits that can be said to be originated from each respective country and also the risk of double taxation will decrease (Skatteverket, 2010).
In a survey conducted by Ernst and Young (2010) it is shown that the pharmaceutical industry is found to view TP as their most important tax issue, followed by the technology and biotechnology industries. This might be the case since tax authorities normally target industries which have a high value, portable intellectual property and which generates high margins. Industries such as telecommunication and banking and capital markets, on the other hand, which are known not to have such high levels of cross-border transfers do not have such high concern with TP (Ernst and Young, 2010).

3.2 Swedish law

Swedish bookkeeping laws, Accounting Act (1999:1078) and Annual Reports Act (1995:1554), are shortly introduced and explained from a perspective of how Swedish corporations need to account for TP. One reason for why these legislations exist is to ensure that the arm’s length principle is applied, when transactions are performed within MNEs. If the arm’s length principle is applied then the rule of adjustments, paragraph 19 chapter 14, in the Swedish Income Act (1999:1229) most likely does not need to be applied.

3.2.1 Accounting Act (1999:1078)

The Accounting Act (1999:1078) regulates the basis of a corporations bookkeeping as well as the obligation to keep books and the fair accounting principle. According to this legislation every juridical person is under obligation to keep books, if not covered by the exceptions declared in this legislation. The paragraphs in the Accounting Act that regulate TP are paragraph 1 in chapter 4 and paragraph 7 in chapter 5 (SFS (1999:1078)).

Paragraph 1 in chapter 4 regulates what the compulsory bookkeeping in Sweden includes, such as that corporations shall perform a current recording concerning all of their business events and closing entries, but also keep verifications concerning these. The paragraph further declares that a balance sheet is to be constructed and the current recording shall be ended by an annual report or an annual account. Paragraph 7 in chapter 5 regulates what the compulsory verifications needs to include. Verifications shall include information concerning when it has been compiled, when the business
transaction occurred, the amount of the transaction and what counterpart that it concerns. The paragraph further declares that when applicable the corporations are also guilty to make sure that the verifications include information concerning actions or other data that have been the basis of the business transaction. In these cases the verifications shall also include where these records are available (SFS (1999:1078)). If TP situations are to be seen as such situations this will imply that corporations have a liability, according to the accounting act, to keep information regarding actions which are the basis of the price setting.

3.2.2 Annual Reports Act (1995:1554)

The Annual Reports Act is the law in Swedish legislation which concerns corporations’ obligation to keep, and make public, annual reports, interim reports and consolidated financial statements (SFS (1995:1554)). It further add to the burden concerning accounting that corporations have, however the positive side of it is that it helps increase the insight for the tax authorities.

When it is defined in accordance with chapter 1 of the Annual Reports Act that there is a corporate group situation, then some obligations arise, which are stated in chapter 7 in the annual reports act. The first paragraph in this chapter declares that all parent companies have to, unless the exceptions in paragraph 2 and 3 are applicable, conduct consolidated accounts. It is not however only chapter 7 that declares liabilities on companies which are a part of a corporate group. Paragraph 7 in chapter 5 declares that parent companies and subsidiary companies must specify how large part of the sales and purchases performed during the financial year that has been conducted with other corporations within the MNE. If a parent company is included in the exceptions from conducting consolidated accounts, they still need to leave information concerning internal profits that have arise from transactions that have been performed within the MNE (SFS (1995:1554)).

According to paragraph 12a in chapter 5, all large corporations have to keep information about the essential transactions performed within the MNE, however exceptions are to be made. What this information shall entail is stated in paragraph 12b, chapter 5 (SFS (1995:1554)).
- The total amount of the transaction and what kind of transaction it is,
- What kind of relationship the both involved corporations have, and
- Other information regarding the transaction, which is relevant to make a judgment of the position of the corporation (SFS (1995:1554)).

If the parent company of a MNE is covered by Article 4 of Regulation (EC) No 1606/2002, there are some retrenchments of the regulations in the Annual Reports Act (SFS (1995:1554)). Article 4 states that for every financial year that starts after the 1st of January 2005 corporations, which are governed by the law of a member state, have to follow the international accounting standards which have been adopted in accordance with Article 6.2 in the same regulation. It is one condition that needs to be fulfilled for this to be accurate, the corporations securities have to be traded on a regulated market by the time of the balance sheet date (Regulation (EC) No 1606/2002). In other words, if covered by article 4, the parent company shall follow the IAS/IFRS standards.

3.3 Swedish accounting standards

3.3.1 BFN R9

The Swedish Accounting Standard Board (SASB) is responsible for the development of the fair accounting principles regarding the work of bookkeeping in corporations. The principles are published in form of public advices and information within their responsibility area. One of SASBs main tasks is to publish information to small entrepreneurs in form of accounting standards and other relevant information (http://www.bfn.se/bfn/infobfn.aspx, 2011-03-15).

Bokföringsnämndens rekommendation 9 (BFN R9) was implemented in January, 1997 and deals with the claim of information about TP. Information about the TP and what method used to set the TP shall kept by corporations. Information regarding the operational category must be compiled into a table, where information about the TP, adjustments and other entries can be found. Declare of information regarding TP can be done in memorandum, consolidated statement of income or in the administration report. However, if the corporation’s choice of bookkeeping falls on the administration
work, the information about net sales is included in either the memorandum or in the consolidated income of statement (BFN R9).

3.3.2 RR 23

Rådet för finansiell rapportering (RFR) was founded in April, 2007, as an effect of the closing of Redovisningsrådet (RR), which published several different recommendations, RR 1-RR 29. As a consequence of the implementation of the IAS decree, the recommendations published by the RR are no longer applicable for the consolidated financial statement in those corporations which are established in accordance to IAS/IFRS. However, the recommendations are still applicable on other corporations. Therefore the recommendations still provides guidance to these corporations, since RFR have no intention to change the recommendations. If a new legislation is implemented in Sweden, which does not correspond to these recommendations, then theses recommendations will not be applicable anymore (http://www.bfn.se/redovisning/RADET/ radet.aspx, 2011-03-29).

RR 23 was implemented 1 January, 2002 and it enacts what information a corporation shall keep about their relations to related parties. Regarding TP, point 12 in this recommendation states that there are several methods to use when deciding on a TP. The different methods to use are explained in points 13-15 and these are the traditional transaction methods. However, point 16 states that those methods mentioned might not be used depending on the circumstances. If there have been transactions performed between related parties, then the involved corporations need to keep information about the character on the relation to that party, the type of transaction and other relevant details about the transaction, which are important in order to understand the financial reports. The principles the companies used when deciding the TP is necessary to get an understanding of the financial reports, something which is stated in point 23 (RR 23, 2001).

3.4 IFRS/IAS

Since the 1st of January 2005 all European traded corporations on European Union (EU) stock exchange, including Swedish ones, have to follow the International Financial Reporting Standards (IFRS) for their consolidated accounts (Regulation (EC)
No 1606/2002). The corporation that provides these accounting standards is the International Accounting Standards Board (IASB), previously known as International Accounting Standards Committee (IASC). When the IASC was the publishing corporations for the standards, the standards were known as International Accounting Standards (IAS) (FAR INFO Nr 17 2001). Since the standards complement each other, they will for the rest of this chapter be referred to as IFRS/IAS standards.

The IFRS/IAS standard that regulates the information regarding the relationship between related parties is IAS 24, which was lastly changed in 2009, November 4th, (632/2010/EU). IAS 24 in its current formation shall be applied by all concerned corporations which have a financial year that have started after the 1st of January 2011. The reason for why this standard exist is stated in the first paragraph of the standard, it is due to the fact that there is a risk or a possibility that related corporations can affect each other’s results and/or financial positions. Therefore it is necessary that the financial statement of such corporations contains the required information which will observe these possibilities. The standard shall, amongst other situations, be adopted when identification of transactions between related corporations is concerned. It requires that information regarding the transactions is submitted in the financial statements (IAS 24, 2009).

Financial positions and results can, as previously mentioned, be affected by a close relationship between corporations. One way in which this is possible is that related parties can perform transactions that would normally not be performed amongst parties which are not related. Another risk is that the price that is used between non-related parties is different from the price used between related parties. Due to these reasons the knowledge about transactions between related corporations can affect the judgments that stakeholders do when analyzing a corporation’s financial statement to get a view of the operation. This judgment includes the potential risk and possibilities that the corporation, which is establishing its financial report, faces (IAS 24, 2009).

IAS 24 includes both requirements of information for all corporations but also information requirements that are specific for parties that are related to the government. The information requirements that concerns the last mentioned type of corporations, will not, however, be covered in this thesis. Information regarding the
relationship between a parent company and its subsidiary company shall be submitted, no matter if any transactions have been performed amongst them. If this information shall be of any use for the stakeholders using the financial reports, then it is suitable that information is given about if these relationships include a determinant control. Information regarding transactions performed between related corporations during the time that is covered by the financial statements shall be included in the financial statement. Such information include the facts regarding the nature of the relationship between the related corporations and information concerning the transactions and outstanding balances, including commitments, necessary for stakeholders to understand the potential effect that the relationship can have on the financial statements. It also have to be stated some minimum information regarding the transactions performed such as, amongst other things, what the amounts of the transactions are. This information shall be given by all involved parties. Concerning information about whether the terms of transactions performed between related corporations have been set on an arm’s length distance or not shall only be disclosed if such terms can be substantiated. If there are no separate requirements of information in order to understand the effects that the transaction between related corporations can have on the financial statements, then it is allowed to aggregate information regarding items of similar nature (IAS 24, 2009).
4 Arm’s length principle

4.1 The principle in general

The arm’s length principle is an international standard that is used when setting TP, which is based on using prices for transactions between unrelated corporations (Mehafdi, 2000). The arm’s length principle first appeared in domestic British and U.S. legislation sometime around the end of the First World War, 1917 to 1918, nonetheless it was not until 1980 when the global emergence of the principle were to be appreciated. It was at that time that the principle was effectively drawn up in the OECD model tax convention and in the double tax conventions (Calderón, 2005). More and more countries around the globe continue to increase their audit of TP, and some countries have implemented severe penalties for corporations that do not comply with the arm’s length principle (Borkowski, 2001).

The arm’s length principle implies that corporations who are under common control have to apply similar terms and prices for financial and commercial transactions which would have been used if the transactions were performed between unrelated parties (Bernsen, Byrgesen, Jernkrok, Jorgensen, Stenersen and Koskinen, 2007). This arm’s length principle is designed for the reason of preventing TP manipulations. There are three main advantages that come from using this principle, it has international support, it creates neutrality between affiliated and unaffiliated firms and it is seen as to be an objective and determinate standard. These are the reasons for why the principle is advocated (Sadiq, 2001).

One reason for why this principle is being used when setting prices within MNEs, is that using the arm’s length principle is the most advocated way to go about in order to maintain a global standard. Using this principle can maintain a global standard, since when setting a price accordingly to it, it means that the price shall be set just as if the transaction was made by two separate and independent businesses (Skatteverket, 2010). The way to set prices on transactions can vary depending on if the transactions are performed between two independent actors or within a MNE (dependent actors). Whilst price setting amongst independent business enterprises are influenced by different market forces, most often price setting amongst dependent business
enterprises are not influenced by market forces to the same degree. There are several different aspects that can affect the price setting within MNEs such as tax fraud and tax avoidance. Cash flow requirements of businesses within an MNE group, conflicting governmental pressures, and pressure from shareholders of publically held businesses are other factors that can affect the TP (OECD TP guidelines, 1995).

If the arm’s length principle is not applied, or if there is a well-founded suspicion that it is not followed, then Article 9 of the OECD model tax convention on Income and Capital (OECD model tax convention) can be applied. This article firstly states that governments are allowed to impose supplementary taxation and secondly that double taxation of the supplementary taxed profit shall be avoided by making a corresponding reduction in the other country (Korn and Lengsfeld, 2007).

### 4.2 Pros and cons of using the arm’s length principle

A major reason to why OECD member states chose to take on the arm’s length principle is because the principle provides a similarity of tax treatment for both independent enterprises and MNEs, which means that the principle puts the enterprises on a more equal footing for tax purpose. This leads to that no one can get tax advantages or disadvantages, which would have led to a distortion in the relative competitive positions. By avoiding this, the arm’s length principle will promote the growth of international trade and investment. Another reason for why OECD advocates this principle is that it has suited most of situations in an efficient way. However, there are some significant cases, where the arm’s length principle is complicated and difficult to apply. One example can be that the MNEs are dealing with highly specialized goods, in unique intangibles and/or in the provision of specialized services (OECD TP guidelines, 1995).

Corporations which are forced to apply the arm’s length principle have two main complaints towards this principle. The first one being that the need for or the requirement of keeping documentation regarding their TP is costly. Secondly due to this principle some corporations claim to be suffering from severe competitive disadvantages (Korn and Lengsfeld, 2007).
Even considering the cons of using the arm’s length principle, the OECD member states still takes the view that it shall be used for evaluation of TP within MNE. The principle provides for the closest estimation of the workings in the open market in situations where goods and services are transferred within a MNE, therefore the principle is sound in theory. However, it may not always be so straightforward to use in practice, but even though it does most often provide for appropriate dividing of levels of income between members of a MNE, which are acceptable by the tax authorities. If the principle is not applied then it will threaten the international consensus, and also increase the risk of double taxation. The principle has, from experience, become sophisticated and sufficiently broad enough to establish a common understanding within the business community and the tax authorities. That understanding contributes to a great practical value, in such that it is achieving the objectives of securing that each jurisdiction receives the appropriate tax base, and also it helps to avoid the risk of double taxation. Thanks to this experience, the arm’s length principle continues to get strong support by the member states of OECD. OECD also find that this experience shall be used to refine the operation and to improve the administration of the principle, this by providing for more timely examinations and clearer guidelines. It is worth mentioning that no alternative, which is realistic or legitimate, to the principle has emerged. The one possible alternative that has been up for discussion, the global formulary apportionment approach, will not however be acceptable neither in implementation, practice or theory (OECD TP guidelines, 1995).

4.3 OECD

OECD was established in 1961 and its mission is to promote policies that will improve the economic and social well-being of people around the world. The first guidelines concerning TP that was published by OECD was the report that got the title “Transfer Pricing and Multinational Enterprises” (OECD TP and MNEs, 1979). The OECD TP guidelines for multinational enterprises and tax administrations (OECD TP guidelines) were later adopted in 1995. These guidelines contain recommendations on how international situations concerning TP can be solved (OECD TP guidelines, 1995).

Using the OECD TP guidelines is a voluntary thing to do, however most countries use the guidelines when designing and developing their own regulations around TP
(Borkowski, 2001). In the court case RÅ 1991 ref. 107 the Swedish Supreme Administrative Court (SAC) has expressed that even if the guidelines published by OECD (the version of 1979) are not binding for the Swedish tax authorities, they still provide for a good and well balanced illustration of the problems and concerns within TP. The guidelines served as good guidance when interpretation and implementation of the regulation of adjustments concerning TP was concerned (RÅ 1991 ref. 107). Another thing stressing the importance of the OECD TP guidelines is that the Swedish tax authorities in their guidelines for international taxation refer to the TP methods in the OECD TP guidelines (Skatteverket, 2010).

The implications of the arm’s length principle can be found in Article 9 in the OECD model tax convention, which, in shortening, states the following, “where...conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly” (OECD TP guidelines, 1995, paragraph 1.6). The article further states that if the arm’s length principle is not applied, then adjustment of the result is needed. By making adjustments according to this article, and as such making adjustments with reference to the terms which would have been obtained if a similar transaction was performed between independent businesses, it means that MNEs are treated as if they were operating as separate businesses, and hence acting in accordance with the arm’s length principle (OECD TP guidelines, 1995).

In the OECD TP guidelines ten factors are stated which shall be kept in mind when applying the arm’s length principle, examples of these factors are a comparability analysis, the effect of government policies and the evaluation of separate and combined transactions (OECD TP guidelines, 1995).

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1 A short draft of the court case is presented in Appendix 1.
2 See Appendix 2 for the full version of Article 9 OECD Model Tax Convention, 1995.
4.4 Swedish Income Tax Act (1999:1229)

The first legislation in Sweden concerning adjustments of TP was implemented in 1928, in paragraph 43 of Municipal Tax Act (SFS (1928:370)). Since then some different adjustments have been done, in 1965 an adjustment was performed which lead to an increase in the variety of situations that were to be covered by the legislation (SOU 1962:59). The final adjustment that led to the current version of the legislation was performed during 1983, causing a reversed burden of proof concerning the prerequisite of community of interest (SFS (1983:123)). With this final adjustment, it is enough if the Swedish tax authorities presents that it is likely that a community of interest exists. The current version implies that if a transaction has been performed within a MNE or within a community of interest, which has led to a lowered result, and with that lower Swedish tax revenues, then an adjustment of the TP is performed when calculations of the tax base are made (Pelin, 2006).

Paragraph 19 chapter 14 in the Swedish Income Tax Act is the Swedish version of the arm’s length principle. To most parts it builds on article 9 in OECD model tax convention. This legislation, just as the regulation made by OECD, implies that the price used within MNEs shall be the same as when a comparable transaction is performed between independent actors (KPMG, 2010). The rule of adjustments have been stated, by the SAC in court case RÅ 2004 ref. 13, to be a special legislation that will have superiority to general legislation when it comes to the estimation of an corporations result (RÅ 2004 ref. 13).

It is stated in paragraph 19 chapter 14 that it can exist commercial reasons for why a lower or higher price than the market price are used for internal transactions, and if so is the case then there can be no adjustment of the TP (SFS (1999:1229)). If an adjustment is to be performed, besides the fact that the conditions of paragraph 19 has to be fulfilled, the Swedish tax authorities also have to prove that it is likely that a community of interests exist according to paragraph 20 in the same chapter (Prop. 2005/06:169). Even if the Swedish tax authorities have the primary burden of proof to show if a corporation have abstained to apply the arm’s length principle, the legislation

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around documentation of TP have made it easier for the authorities to show that a lapse from the principle have occurred (Skatteverket, 2010).

4.5 Tax surcharges

There exist no specific TP penalties in Sweden, however it exists penalties, in the form of surcharges, if the corporation openly declares inaccurate or misleading information. Such penalties will however not be issued if the corporation openly declares the actual circumstances but fails to perform an accurate judgment of the legal consequences. Information which can be seen as inaccurate or misleading is such information which is false or if information which is compulsory for tax purposes are left out. Penalty for corporate tax purposes, is for the time being, 40\% of the tax amount related to the necessary income adjustment (Bernsen et al., 2007). This surcharge penalty can be found in paragraph 4, chapter 5 of the Swedish Tax Assessment Act (SFS (1990:324)). It is up to the Swedish tax authorities to prove that misleading or inaccurate information have been given. The possibility for the tax authorities to assess whether the transactions meet the requirements of the arm’s length principle is increased by the documentation requirements that the corporations possess. However, regardless of this documentation requirement it is still the tax authorities which have the burden of proof (Bernsen et al., 2007).

4.6 An example of the arm’s length principle

Here follows an example which explains the arm’s length principle. A Ltd. is a manufacturer of cars, located in State A, which together with A AB, a retailer located in State B, constitutes in a MNE. A Ltd. does not only sell its cars to the related party A AB, it also sells cars to B Ltd. and C AB. In the first figure, figure 1, it is shown the situation where the arm’s length principle is not applied and the second figure, figure 2, shows a situation where the arm’s length principle is applied. For simplifying reasons each car is worth € 30 000, and there are no other transactions performed except those shown in the figures.

In the first situation, figure 1, the MNE has lowered their taxable result from € 30 000 to € 18 000, which means a decreased tax revenue for State A equal to (€ 30 000*30\%) – (€ 18 000*30\%) = € 9 000 – € 5 400 = € 3 600. However in the second situation,
figure 2, where the arm’s length principle is applied the tax revenues for State A are equal to € 30 000*30% = € 9 000.

By not using the arm’s length principle in the first situation, the MNE have managed to move a part of the value of the car out of the high tax jurisdiction, State A, to the low tax jurisdiction, State B, and as such they have also decreased their tax costs.

Figure 1 – A way of using TP as a means to escape tax liabilities.

Figure 2 – The correct way of applying the arm’s length principle.
5 Pricing methods

5.1 What pricing method shall be applied?

There are two main groups of pricing methods\(^4\), traditional transaction methods and transactional profit methods, which both are approved and recommended by the OECD (Skatteverket, 2010). However, OECD advocates the use of traditional transaction methods before using transactional profit methods (OECD TP guidelines, 1995). Transactional profit methods shall only be used when the traditional transaction methods are found to be inappropriate, not sufficiently reliable or cannot be used due to the lack of comparable transactions (SKV M 2007:25). Nevertheless, even if the transactional profit methods are a “last resort” they shall not automatically be adopted without first testing the reliability of them (OECD TP guidelines, 1995). The reason for why there is no single universal pricing method that is used at all times in all corporations is that setting prices and the strategies for setting prices varies with different corporations and what type of business that is concerned (Arvidsson, 1972).

When using a non-arm’s-length based approach it is called a global formulary apportionment, this is rejected by the OECD member states since they reiterate their support for the arm’s length principle. Even if the method sometimes have been suggested as an alternative to the arm’s length principle, it has only been attempted by some local taxing jurisdictions, but it have not been applied between countries (OECD TP guidelines, 1995). This method will however not further be discussed in this thesis.

5.2 Traditional transaction methods

5.2.1 Introduction

This type of TP methods are the most direct means of establishing whether the conditions of transactions between associated corporations are set accordingly to the arm’s length principle. This is also the reason for why, as mentioned in the introduction to this chapter, these methods are the preferable ones. The downside to

\(^4\) In Appendix 5, a graph is presented which shows where in the income statement that the different pricing methods have their base.
these methods is that when no data exist or when the data that do exist is insufficient they are hard to apply (OECD TP guidelines, 1995).

### 5.2.2 Comparable uncontrolled price method

The first of the traditional transaction methods is the CUP and it is based on the market price on comparable goods (Skatteverket, 2010). Market based prices can include both internal and external comparison transactions to ensure that the arm’s length principle is set according to the CUP. Either a comparison can be done with the price used for a similar or the same product that is transferred between two completely independent corporations, an external comparison. Or the price for the same or similar product that is transferred between one of the dependent corporations and one independent corporation can be used, an internal comparison (Eden et al., 2001). To get a meaningful comparison the economically significant features has to be sufficiently comparable to one another. Some examples of these features are terms of the contract, differences in quality and quantity and terms of payment. However, the differences in price can be a symptom of the market situation that prevailed when the agreements were entered into (SKV M 2007:25).

According to OECD TP guidelines (1995), assumed that chapter 1, concerning the arm’s length principle, in the same guideline is fulfilled, one of the two following conditions have to be meet in order for a transaction to be comparable.

1) “none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market; or

2) reasonably accurate adjustments can be made to eliminate the material effects of such differences” (OECD TP guidelines, 1995, article 2.7).

As mentioned, choosing a pricing method always aims at finding the most appropriate one for every specific situation (Skatteverket, 2011). As long as it is possible to locate uncontrolled transactions that can be used for comparison, then this method is the most reliable and direct way to apply the method of arm’s length. In other words, one can say that in situations like these, then the CUP is to prefer over all the other pricing methods. However, if a difference in prices is detected after a comparison is
performed, then it can be an indication of that the arm’s length principle for TP is not met and that an adjustment has to be made (OECD TP guideline, 1995).

This market based method is most often used for raw material type of businesses, agricultural and financial products and chemical staple commodities. As mentioned before, no single method can be used at all times and the disadvantage with this method is that it can be quite hard to find a satisfactory comparable transaction, since it requires a certain degree of compliance. Transactions may also need some adjustments for divergences, which is another downside with this method. This is so since the reliability of the method depends on what degree of accuracy adjustments can be made in order to achieve comparability (SKV M 2007:25) (OECD TP guidelines, 1995).

5.2.3 Resale price method

Determining a market based price accordingly to the RPM is an indirect way of determining a TP (Skatteverket, 2010). When a product that is acquired from an associated corporation is sold on to an independent buyer, the resale price used to sell the product to that independent buyer is the base for this method (SKV M 2007:25). To get a TP by using this method that can be considered to be a price set accordingly to the arm’s length principle, the resale price given to the independent buyer has to be reduced with a suitable before-tax profit. This suitable before-tax profit is equal to the amount of which the corporation needs to cover their costs, including a profit markup. In other words, taking the resale price and decrease this with the before-tax profit is considered to be an appropriate price for the original transaction performed within the corporate group. Nevertheless, in order to perform a comparison, just as with the CUP, it is necessary that the two conditions mentioned in chapter 5.2.2 in this thesis are fulfilled. However, the necessary adjustments with the RPM are usually not as heavy as when using the CUP. This is so since profit margins are less likely to be effected by minor differences in the product, than prices are (OECD TP guidelines, 1995).

If a manufacturing corporation has sold a product to an associated reseller corporation, and this last-mentioned corporation, without any form of refinement, sells the product on to an independent party, the RPM can be used. The method is nonetheless probably most useful when it is applied in marketing operations. Another positive thing about this method is that if all characteristics of the two comparable transactions are the same
except for the product itself, then the method can still be used (OECD TP guidelines, 1995). Should however, some form of refinement have been performed to the product, which will significantly enhance the value of the product, then this method is not a useful way to go about to set a price at arm’s length (SKV M 2007:25).

To calculate or estimate a correct gross profit margin (before-tax profit) is the difficult part with this type of method. The longer the time goes between the two involved transactions, the less useful this method becomes. This is so since then the corporations need to consider other factors when making the comparison, such as exchange rates, costs etc. Another downside to the method is that if the resale price margin of an independent corporation is used, it can be affected if there are material differences in the way in which the dependent and independent corporations carry out their businesses (OECD TP guidelines, 1995).

5.2.4 Cost plus method

The cost plus method is the method that builds on the cost of the product or service. On top of that cost of manufacturing or acquiring, a market based cost plus markup is added. Just as the RPM the cost plus method is an indirect method for setting a TP accordingly to the arm’s length principle (Skatteverket, 2010). As mentioned, when using this method to set an arm’s length price between a seller and an associated buyer, the price is based on the seller’s cost of producing or acquiring a product or service with addition of the costs for every link in the MNE, plus a cost plus markup that is market based. The seller’s original cost for the product or service include both the costs for acquiring the semi-finished products or the raw material, and also the production costs for completion of the finished product or service, plus a markup for a reasonable profit. To the added cost for every party in the line of production a market based profit margin is added, which is calculated by comparisons from independent corporations. Nevertheless, in order to perform a comparison, just as with the CUP method, it is necessary that the two conditions mentioned in chapter 5.2.2 in this thesis are fulfilled. However, the necessary adjustments with this method, just as with the RPM are usually not as heavy as when using the CUP method. Two situations where the cost plus method is most useful are when semi-finished goods are sold between
associated corporations and when the controlled transaction is concerning the provision of services (OECD TP guidelines, 1995).

One downside to the method is that regulations and ways of account for costs vary between countries, which can cause severity on determining a relevant data of costs (OECD TP guidelines, 1995). One important thing to keep in mind when determining this data is to also include indirect costs and not only the direct costs (SKV M 2007:25). However, when using the cost plus method it can be necessary to use cost calculations based on averages. A limitation to the method is that it is only the costs of the supplier of the goods that are being considered, and this can raise allocation problems of some of the costs between suppliers and purchasers. Since there are no single solution to deal with all these minor issues, the associated corporations can, in advance, agree on what costs that will be an acceptable basis for the cost plus method (OECD TP guidelines, 1995).

5.3 Transactional profit methods

5.3.1 Introduction

Besides the traditional transaction methods, OECD has also elaborated a set of transactional profit methods, the PSM and the TNMM. PSM means, in short, that each separate businesses in a corporate group gets their share of that corporate group’s profit that is derived from a inter-group transaction. TNMM on the other hand is based on the net profit margin that a corporation, which is a part of a MNE, gets in an inter-group transaction. These transactional profit methods are the methods used when the traditional transaction methods either cannot be applied at all or cannot be applied on their own. These are methods that examine the profits that arise from particular transactions that are performed between associated corporations. There are some concerns from many countries regarding the use of this type of methods, one is that it might be applied without adequately taking relevant differences between the corporations, both dependent and independent, that are being compared. Another concern is that such safeguards that have been established for the traditional transaction methods might be overlooked. These methods are however not recognized to use when setting TP, instead it is most often used when considering if the price is set
on an arm’s length distance. Just as with the traditional profit methods, it is also here important to bear in mind that it is important that it is possible to calculate for appropriate adjustments (OECD TP guidelines, 1995).

5.3.2 Profit split method

Since very few countries have much experience when it comes to apply the TNMM, and since it is therefore considered to be experimental, most countries prefer to use the PSM as a last resort method. Nonetheless, the PSM has not either been frequently used, and when used it has mostly been in situations where the risk of unrelieved double taxation is minimal (OECD TP guidelines, 1995).

The allocation of internal profit, within a corporate group, when using the PSM needs to be performed in an economically well-grounded way (OECD TP guidelines, 1995). There are though two conditions that needs to be fulfilled in order to be able to use the PSM, the first one is that a proper analysis of functions has to be done, and the second one is that it requires information from the involved foreign corporations within the corporate group (SKV M 2007:25) (OECD TP guidelines, 1995).

When applying this method, the first thing that must be done is to determine a profit which will be generated by a transaction where two or more associated corporations co-operate. Examples of such transactions can be manufacturing or selling of products. Each MNEs contribution is evaluated on the basis of the function analysis, which is an analysis of the functions performed by each corporation. The second step in setting a TP accordingly to the PSM is to divide the aggregated transaction profits, in a way similar to that if the situation is such that the corporations were not associated to each other (OECD TP guidelines, 1995). To divide the profit there are two different ways to go about, one is the contribution analysis and one is the residual analysis (SKV M 2007:25) (OECD TP guidelines, 1995). However, these two ways are not the only way to apply the PSM, as long as the arm’s length principle is considered, nor are they mutually exclusive. When using the contribution analysis each corporation that is part of the transaction gets their share, which is equal to the comparative value of their function in the line of the transaction, of the total transactions profit. If the residual analysis is used for a specific transaction, then each corporation, which is a part of that specific transaction, gets a part of that transaction’s total profit which is equal to a
normal rate of return. Whatever is left after this is divided amongst the concerned corporations in an equal matter as if they would have been independent corporations. One caution that is brought up in the OECD TP guidelines is that the normal rate of return is calculated based on budgeted numbers and values, and is not based on numbers available after the transaction is performed (OECD TP guidelines, 1995).

As with the traditional transaction based methods, there are also downsides and advantages with this method. The downside with the PSM is that the method is based on some external market data which might have less connection to the joint transactions than other methods does. The external market data is used to estimate the contributions that each respective corporation within the MNE have done to the total transaction profit. However, an advantage is that since both parties which are involved in the transaction are being evaluated, there is a lesser risk that either of them will be left with and extreme and improbable profit result. Another advantage with this method is that it does not really require any comparable transactions. This is so since the dividing of the profit, to a high degree, is based on the assets and functions that each respective corporation contributes with (SKV M 2007:25) (OECD TP guidelines, 1995).

5.3.3 Transactional net margin method

The final of the five OECD methods of setting a TP accordingly to the arm’s length principle is the TNMM. When using this method, a corporations operating profit is related to a suitable base consisting of, for example assets, costs or turnover. The operating profit used is the one arising from a transaction made with an associated corporation. TNMM consists of comparing an operating margin, or another suitable profit level indicator, with an equivalent margin (SKV M 2007:25). What margin that is used for comparison is influenced by how well the value of the assets, employed in the calculations, are measured and the factors affecting if specific costs shall be marked up, passed through or entirely excluded from the calculation (OECD TP guidelines, 1995). This last mentioned margin, shall be equal to one that the concerned corporation obtained with, for example an independent corporation. If this situation is not possible to obtain, then the operating margin can be collected from a comparable transaction performed by an independent and comparable corporation. Such an
operating margin can however be in need of adjustments, the reason for this is that the margin needs to be adapted to the differences between the chosen comparable transaction and the transaction that is “under investigation” (SKV M 2007:25) (OECD TP guidelines, 1995).

If there are differences in the features of the transactions that are being compared, then this method can still be used. This since the operating margin does not become affected to such differences in the same degree as the price does, and this is an advantage with the TNMM (SKV M 2007:25) (OECD TP guidelines, 1995). Another advantage with this method is that it is only necessary to analyze one party (SKV M 2007:25). This data might not be available at the time of the controlled transaction, which makes the method hard to apply at the time when the transaction is performed (OECD TP guidelines, 1995).
6 APA

6.1 Definition

A short definition of APA is that it is a procedure where corporations and tax authorities reach to an agreement of future price settings on transactions performed within MNEs. An APA is a way to reach security concerning price settings in one or more countries. There are three different ways of entering into an APA, unilateral, bilateral and multilateral. Unilateral APAs concerns only one country, whilst bilateral and multilateral concerns two or more countries. Due to the decreased risk of double taxation that comes with bilateral and multilateral APAs, these are preferred. Since the procedure of applying for an APA can be both very costly and time-consuming, APA is most suitable for larger and more money intensive transactions (Jernkrok and Jakobsen, 2009).

In the application of TP legislation the use of APAs can also be seen as an alternative method of resolving conflicts between corporations and tax authorities when it comes to the application of the arm’s length principle (Calderón, 2005). One condition which is necessary to get an APA is that the corporation is fully prepared to co-operate and negotiate with the tax authority (prop. 2009/10:17). Examples of such co-operations can be the submission of documentation which support their proposal but also in identifying similar uncontrolled corporations which can be used as a comparable example (OECD TP guidelines, 1995).

The increased use of APAs in countries such as the Netherlands and Belgium can pursue a two-fold aim. On one hand, the accusations of harmful tax practices which the system of “informal rulings” have given rise to in recent years can be sought to be avoided by these new APA legislations. On the other hand, tax incentives and attempts to attract certain kinds of businesses can affect the continuing development of the legislations. Therefore APA will continue to be the instrument to make application of TP legislation as flexible as possible in such countries. The reason for such flexibility is that the countries shall be able to remain, as far as taxation is concerned, internationally competitive and attract business investment (Calderón, 2005).
It is more suitable for some corporations than other to apply for an APA, such corporations includes those who is currently undergoing a TP audit, which are risk averse and those who are involved in intellectual property migration (Parker, 2008). The applying corporation has to make a trade-off between the risk of being subject to a TP audit and the costs of applying for an APA (Markham, 2005). In the U.S., corporations which are dealing with cost sharing arrangements and financial products or who are involved in the pharmaceutical industry, automotive industry or in the semiconductor industry are seemed to be the type of corporations which most frequently apply for APAs (Allen, Tomar and Wright, 2007). An APA will help promote reasonable TP and reduce TP controversies and at the same time help decrease the high costs which are typically involved in TP examinations (Bricker and Amann, 2001). The more detailed an APA is concerning the implementation of the selected transfer pricing method (TPM), the more it will provide security for the ones using it (Schnorberger and Wingendorf, 2005). Concerning application for APAs for small and medium sized enterprises (SMEs), they most often require less documentation and information (Schnorberger, 2007). The fact that no TP adjustments will be performed by the tax authorities if the terms of the APA are followed shall be confirmed to the corporation in the APA (Bricker and Amann, 2001). If an APA is not entered, the corporation is left with the risk that at any time the tax authority can, under the basis of an audit, substitute the price used by the corporation to an arm’s length price (Sadiq, 2001). If a corporation wants to apply for an APA, it is important that the information conducted in the application will not be used for any other reasons than for the issuing of an APA. It is by this important to consider the relationship between the issuing department and the auditing department. If the security concerning this is not fulfilled then it is most certainly so that the APA program will not have any substantial impact in practice (Höglund, 2007).

APAs are conceptualized as a means of attaining legal certainty and avoiding disputes (Baumhoff and Schaumburg, 2000). In an issued APA it is normally not any specific amount stated, instead there are only instructions of how the taxable amount is calculated (Prop. 2009/10:17).
Ernst and Young conducted a survey during 2010 to see the progress of an APA program, the survey was applied on 877 MNEs across 25 countries. It showed that 23% of parent companies have been using APA as a controversy management tool and 90% of these corporations have reported that they will use the APA program again. In the same survey it is concluded that 79% of the approached MNEs were satisfied with the APA process. However, it still seems that several MNEs are unaware of the benefits of APA, only 47% of the MNEs which are currently not using APA answered that they will consider using it in the future (Ernst and Young, 2010).

6.2 History of APA

Japan was the first country to implement APA legislation in the middle of the 80’s, followed by the U.S. in 1991, after this the APA boom started and countries such as New Zeeland (1994), Canada (1994), Australia (1995) and Mexico (1995) implemented similar APA legislations (Höglund, 2007). In the U.S., the idea of an APA was discussed in the 1980s and the idea was derived from the lack of a reliable method for determining TP that was certain to be acceptable to the Internal Revenue Service (IRS) in the event of an audit (Calderón, 1998) (Fallon, 1997). The APA program was developed as an alternative means of prospectively resolving intercompany pricing issues through a negotiated agreement between the corporation and the IRS and when relevant a foreign taxing authority. In other words, APA was firstly developed as a means of solving TP disputes (Fallon, 1997).

IRS developed a new practical and workable set of TP rules that would reduce uncertainty and promote voluntary compliance while diminishing the burdens to both corporation as well as the IRS (Fallon, 1997). Due to the success of an APA, other countries all over the world have implemented the APA program (Calderón, 1998). European countries can be said to have started their development around APA regulations during the start of the 21st century, France established their regulations during 1999, Germany in August 2000, the Netherlands in 2001, and Belgium in 2002. The reason for the development concerning APA legislation is believed to be the implementation of APA in the OECD TP guidelines during 1999 (Calderón, 2005).
6.3 Advantages of APA

As with any other TP solving method there are both advantages and disadvantages to the APA, however as a whole the pros seem to outweigh the cons (Monsenego, 2007). MNEs use of an APA will provide the opportunity to negotiate what pricing method to use for transactions in complex situations for a specific period of time. This will drastically decrease the risk of audit and penalty assessment (Borkowski, 2001).

In countries where an effective application of TP legislations risk to possess problems, due to a potential lack of legal security it have become more and more common that APAs are being used. The risk of legal security can be caused by the complex nature of the TP legislations, but also by the tax authorities’ aggressive approaches in the subject. In such situations APA provides a greater legal security for, in most situations, a cost that is lower than the potential risks that could have been the case if an APA was not applied (Calderón, 2005). By enhancing the predictability of tax treatment in international transactions the APA can eliminate the uncertainty that corporations can feel in such situations (OECD TP guidelines, 1995). If a corporation before performing large, money intensive transactions gets notifications concerning the principles of calculating a TP, it can reduce, however not eliminate, the risk of unpleasant surprises that can arise after the transaction (Jernkrok and Jakobsen, 2009). However, if an APA shall provide certainty for TP issues over a specific period of time, then the corporations have to meet the critical assumptions of the APA. The APA also have the advantage that when expired it can be renegotiated, which provides for the option to extend the period of time of which the APA shall apply. Another advantage that comes with the certainty of APAs is that corporations more easily can predict their tax liabilities, which in turn provides for a tax environment that is favorable for investments. APA can help to stimulate a free flow of information between all parties involved, since it provides for a less confronting atmosphere than is the case in TP examinations. This free flow of information helps to reach a practicably workable and legally correct result. It can also help in achieving more objective reviews of information and data than what would otherwise be the case. The process of APA will also help enhance closer relationships between the involved parties (OECD TP guidelines, 1995).
Examinations concerning TP are often both expensive and time-consuming, therefore it can be beneficial to apply for an APA since the APA process generally takes substantially less time to complete\(^6\) (Levey and Wrappe, 2007). A beneficial part of the APA is that it is most certainly more easy to negotiate an agreement beforehand than solving a conflict after it has arisen. So if accurately designed, a Swedish APA program will most likely be of great usage for both the Swedish tax authorities and corporations (Höglund, 2007). Corporations get an increased incentive to invest abroad, it mitigates long and expensive disputes and it limits their incentives of tax avoidance. For the tax authorities/countries this means an increased security of their tax base and it also makes it more attractive to invest abroad (Monsenego, 2007). When an APA is issued, then the tax authorities cannot question the used TPM during the period which the APA is valid, however this is only the case as long as the conditions have not been changed to such an extent that they will affect the original APA (Norell and Billgert, 2010). Whence a roll-back treatment has been issued, there can no longer be any application for TP penalties for previous years (Parker, 2008).

### 6.4 Disadvantages of APA

A downside with the APA is the heavy requirements of documentation that are needed for the procedure of conducting an APA, the reason for this burden of documentation requirements are that the APA will be valid for somewhere around three to five years and therefore the need for relevant information is big (Jernkrok and Jakobsen, 2009).

The implementation of APA legislations will at the start place a strain on TP audit resources. This since resources which have been earmarked for other purposes such as advising, litigation and examination are now used for the APA program. Corporations which have applied for APAs want to have it issued as soon as possible and will therefore place demands on the tax authorities, demands which will not coincide with the resource planning of the tax authorities. This will make it difficult to conduct the process of APA efficient and also maintaining the efficiency of other equally important work. However, the renewal process of an APA is believed to be less of a burden for the tax authorities. When placing too big of a focus on issuing APAs, the tax

\(^6\) An example showing the potential cost savings as a consequence of the APA is included in Appendix 6.
authorities will face the risk of losing resources which can be better deployed in reducing the risk of losing tax revenues. It is not only on the tax authorities where an administrative burden will be placed, an APA can crave more corporation and detailed industry specific information than other TP examinations will. Other concerns that arise with APA are that a closer study of transactions can be performed, than is the case of normal TP examinations, since the corporation has to provide for detailed information. At the same time the corporations are not in any way sheltered from TP examinations, just because they apply for an APA. If a corporation have an APA, they might still have to prove that they have fulfilled the terms and conditions of the APA (OECD TP guidelines, 1995). Even if an APA is used, and brings with it a greater certainty, this is not equal to that the TP used before the APA was implemented will not be subject for future investigations (Mehafdi, 2000). Due to this it is crucial that tax authorities try to ensure that the procedure of an APA will not be too burdensome for corporations, and that the demands placed on the corporations are not in any way larger than the scope of the APA application (OECD TP guidelines, 1995).

One further disadvantage with the APA is the risk that corporations take when needing to disclose sensitive information in their application (Parker, 2008). The danger with this is the possible misuse of this information by tax authorities. It is therefore important that the tax authorities do their best in ensuring confidentiality of sensitive information and documentation which are submitted to them in the application of an APA (OECD TP guidelines, 1995).

Since the procedure of applying for an APA can be both time-consuming and expensive, especially where independent experts are consulted, it most certainly cannot be used by all corporations, since this is something that small corporations might not be able to afford. Another thing limiting the number of applications that a tax authority can entertain can be the resource implications of an APA program. A way to solve such problems when evaluating APAs can be for tax authorities to ensuring that the level of investigations are adjusted to fit the size of the international transactions concerned (OECD TP guidelines, 1995). It is not only the fee of applying for an APA which makes the APA process expensive, the corporations also have to be prepared to pay for an independent expert helping them evaluate and review the proposed TPM in
the APA application (Markham, 2005). Since the process of an APA can be quite expensive it seems to be more suitable for larger MNEs than for smaller ones. Therefore it can be said that APAs, at their current effort requirements, are out of reach for the most part of corporations (Bricker and Amann, 2001). According to Lodin, (2001), APAs will never be an optimal or even available solution for SMEs. Lodin further states that the procedure of APAs, with a focus on multilateral APAs, is in need of improvements, since this will be of importance to larger corporations.

One further disadvantage is the possibility of going through the process of applying for an APA, with all the costs this includes, and then ending up with a declined application (Markham, 2005). However, there is no way to say that in general an APA is good or bad, the one applying for an APA must carefully weigh the pros and cons of an APA on a case-to-case basis. This is so even if the risks are lowered by the usage of pre-filing meetings on a no-name basis (Schnorberger and Wingendorf, 2005).

6.5 Article 25 OECD model tax convention

The mutual agreement procedure (MAP) is stated in Article 25 of the OECD Model Tax Convention, a MAP is an agreement performed between the competent authorities of the countries involved in the convention (OECD model tax convention, 2010). It is recommended by the OECD that a MAP is entered by the involved countries and that the APA is manifested in a convention between the countries and the corporations, all this to increase the predictability of the APA (Höglund, 2007). The purpose of MAP is that the difficulties that exist when applying the model tax convention shall be eased. More specifically the purpose of the MAP with respect to TP is to resolve problems that arise when Article 9 of the same convention is used for calculations and taxations of income. The adjustment procedure of TP that exists in Article 9.2 can also be made easier by the MAP found in Article 25, in the way that it helps resolving economic double taxation (OECD model tax convention, 2010). It is section three of this article that permits countries to enter into APAs (COM (2007) 71 final).

The tax authorities only have an obligation to at their best attempt try to find a solution there are no demands that an actual solution needs to be found. If no solution is found
the situation can nonetheless be submitted to arbitration within two years after the case was dropped from the competent authorities (OEDC model tax convention, 2010).

The difference between APAs and MAPs lies in that an APA procedure primarily considers the tax treatment of future transactions whilst a MAP seeks to resolve disputes concerning the past (Schnorberger, 2007). One advantage that comes with MAP APAs with respect to conventional MAPs is that the related parties are allowed to participate in the process, in such ways as presenting their case, provide information and negotiate with the tax authorities (OECD TP guidelines, 1995).

### 6.6 Unilateral APAs versus Bilateral APAs

When it comes to the downsides of using APAs it seems like the unilateral APAs provides for the larger part of such downsides. For tax authorities unilateral APAs can cause problems since tax authorities might disagree concerning the APAs conclusions. Considering the corporations, the unilateral APA can affect the behavior within the MNE. Unilateral APAs can also shift the administrative burden from the country providing the APA onto the other jurisdictions. The issue of corresponding adjustments arises when unilateral APAs are implemented, this since if the other country does not find the APA to be consistent with the arm’s length principle, it will not make an adjustment of TP which is equal to that adjustment performed by the country that have issued the APA. If an APA is static and does not flexibly change in accordance with market conditions, it might not satisfactorily reflect the arm’s length conditions. Possible effects of a unilateral APA can be the risk of double taxation, and therefore the usage of bi- or multilateral APAs are preferred. Sometimes unilateral APAs are not even allowed by the national legislation. According to OECD TP guidelines (1995), APAs shall be concluded on a bi- or multilateral basis wherever possible, and it shall then be conducted between competent authorities through the MAP. Wherever bilateral APAs are used the risk that corporations shall feel compelled to enter into an APA or to apply non-arm’s length agreements is reduced. However, this is not the only positive side affect of using bi- or multilateral APAs, it will also provide for greater certainty and it will be more equitable for all parties involved. The bilateral APAs are also believed to reduce the moving around of profits in order to reduce or escape tax liabilities. However, this might not be the case for unilateral
APAs, this since the tax authorities affected by such an APA might not consider that the method used will help to reach an arm’s length distance. A reason for why bi- and multilateral APAs are preferred is that they can enhance the MAP, this by significantly reducing the time needed for such an agreement. The reason for this is that the competent authorities are, instead of dealing with prior year data that can be found to be both time-consuming and difficult, dealing with current data (OECD TP guidelines, 1995). According to Jernkrok and Jakobsen, (2009), there are some positive sites to using the unilateral APAs, even if they agree that bi- and multilateral APAs are the best and most effective way to reduce the risk of economic double taxation. One such situation when unilateral APAs can be beneficial, is when the corporation is in need of a faster decision regarding price settings, than MAP allows for, to get a hint of whether the price setting is acceptable in a certain country (Jernkrok and Jakobsen, 2009).

Here below it will be presented a simplified structure on how a procedure of a bilateral APA can be structured.

![Diagram of a bilateral APA structure](image)

*Figure 3 – A simplified way of how a bilateral APA is structured.*
7 Regulation of APA

7.1 OECD TP guidelines

The last time that the OECD TP guidelines were updated, since its official publication in July 1995, was in October 1999, when it was updated due to the conclusions of APAs (Calderón, 2005). The APA guidelines were implemented in the form of MAP APAs (OECD TP guidelines, 1995). According to the OECD, APA is used to decide a TP in beforehand with the help of principles and methods. The purpose of APAs according to OECD is to find a quick solution to questions concerning price settings, make negotiations between competent authorities easier, to increase the corporation’s predictability, and to use the resources of tax authorities more efficiently. An APA will also help ease the setting of TP and help to increase the predictability for the corporation of the MNE (Prop. 2009/10:17).

The definition of APA performed by OECD countries is that APA is an arrangement that, before a controlled transaction is performed, determines an appropriate set of criteria’s for the determination for TP for controlled transactions. Such arrangements and its criteria’s are set for a fixed period of time. According to OECD there are two types of APAs, the first one being unilateral APAs which only includes the tax authorities of one country, and the second one being bilateral or multilateral APAs which involves the tax authorities of two or more countries (OECD TP guidelines, 1995).

When it comes to the conclusion of an APA process, the tax authorities shall inform the involved related parties within their country, that as long as they follow the terms of the APA, no TP adjustments will be made. The following of terms are monitored either by the use of filing annual reports or regular auditing. Another thing that shall be contained within an APA is the possibility of revision or cancellation of the APA, if there are significant changes in business operations or uncontrolled economic circumstances which can affect the reliability of the used methodology. If misrepresentation of information during the APA negotiation, or in the case of fraud or failure of complying with the APAs terms and conditions, then the APA can become subject to cancellation, including retroactively cancellation. However, before such
Cancellation is done, the tax authorities planning to do so must inform other involved tax authorities of their intentions and why they are planning to do so (OECD TP guidelines, 1995).

The coverage of an APA might either be all the TP issues of a corporation or it might be specified to certain affiliates and intercompany transactions. The applying corporations may also limit their request of the APA to specific prospective tax years, but the APA can also, in some circumstances, be used to solve for TP issues in open prior years (OECD TP guidelines, 1995).

When conducting an APA it must be done within the scope of the MAP, at least according to OECD. This is so even if arrangements such as APAs are not expressly mentioned in Article 25 of the OECD model tax convention, which is regulating the MAP, however also general domestic authority shall be considered. Countries which lack regulations concerning APA shall be able to use Article 25 of the OECD Model Tax Convention, if this can be seen as a solution to TP issues resulting in double taxation. If such arrangements are made these will be legally binding for all involved parties, and it will create rights for the corporations involved (OECD TP guidelines, 1995).

According to OECD it is important to consider when implementing APA legislations that APA shall not only be available for larger corporations, since this can raise questions of equality and uniformity. The reason for why such questions can be raised is that all corporations who are in identical situations shall be treated the same. Another thing that shall be considered is the importance of a greater uniformity, and its benefits for both corporations and tax authorities (OECD TP guidelines, 1995).

Even if the OECD guidelines do not have any legal bindings, it is said to serve a practical implication for countries having not yet implemented any formal APA regulation (Högland, 2007). Even if the OECD TP guidelines are used as a basis for the OECD member states TP regulation, it is most often only used as a minimum standard. The OECD member states have developed these standards into their own with more far-reaching rules that go beyond the guidelines and are sometimes just the opposite of the guidelines. This might be a reason for why the guidelines can be seen as to have created more problems than expected (Lodin, 2001).
7.2 European Union Joint Transfer Pricing Forum

The guidelines from the EU commission were published in 2007 within the European Union Joint Transfer Pricing Forum (EUJTPF), and they were established in within the frames of the OECD TP guidelines (Höglund, 2007). The aim of the EUJTPF is to prevent disputes that can arise from TP, such as the risk of double taxation. The guidelines can be said to constitute for a worthwhile blueprint for the process of APA across the EU. An APA is in the guidelines defined as an agreement between the tax authorities of the member states on how transactions performed between related parties established in those member states shall be taxed. The proposed advantages of APA mentioned in the guidelines are that they act as an efficient tool for dispute avoidance, it will provide for a larger certainty, and it will simplify and prevent costly and time-consum ing tax examinations concerning the transactions covered by the APA. The guidelines do not only provide for guidance to the corporations but also explain how member states shall conduct the process of an APA (COM (2007) 71 final).

Advantages of an APA are not only for the corporations but also for the tax authorities. The certainty of taxation treatments that an APA provides is beneficial for both parties. Corporations knows how to set the correct TP and tax authorities do not have to conduct audits to establish the correct TP, they now only have to check if the APA have been applied correctly. These guidelines provides for the best practices for conducting an APA and for an efficient process. These guidelines further provide for what happens at each stage of the process. Focus of the guidelines lies on bi- and multilateral APAs rather than on unilateral APAs which are said to have a lesser impact on solving the risk of double taxation (COM (2007) 71 final).

The fact that an APA have been issued does not stop the tax authorities of conducting audits on these corporations, however such audits mainly have the focus of assuring that the APA is being followed and applied in an appropriate way. Also the withdrawal of an application for APA shall not automatically trigger the tax authorities to perform an audit. In order for tax authorities to monitor the use of an APA, the corporation need to keep documentation regarding their appliance of the APA, and what information such documentation shall entail shall be negotiated during the process of the APA (COM (2007) 71 final).
One reason for why application fees can be supportable is that they can help ensure that APAs are only made available where they can consider being appropriate. Another argument for having fees is that an APA program might not otherwise have been possible. However, fees shall not be a precondition for an efficient service, even if the use of fees is to be decided by each member state. Neither shall the fees be set on such a level that it provides for a disincentive to apply for an APA (COM (2007) 71 final).

There are four distinct steps of an APA process.\(^7\)

1) A pre-filing stage/informal meeting.
2) After the informal meeting a formal application for the APA is filed as soon as possible with regards to the years that it shall cover.
3) After the formal application then it is time for an evaluation and the negotiation of the APA.
4) The negotiations and the evaluations shall eventually reach to a formal agreement of the APA (COM (2007) 71 final).

What transactions to be included by the application of APA is initially a decision that the corporation has to take. As mentioned, every APA is different, and therefore a time table for the APA shall be set as early on as possible in the process. However, even if there is no exact timeline for conduction an APA, it shall be done as quickly as possible, requiring tax authorities to examine the information as quickly as possible and the corporations to provide such information as quickly as possible (COM (2007) 71 final).\(^8\)

It exist a possibility to apply an APA for previous periods, this is known as a roll-back. This can be acceptable where it can help resolve disputes/the possibility of disputes for earlier periods. For roll-backs to be a possibility then the facts and circumstances in the APA shall have existed for previous periods. A roll-back shall only be used under the incentive of the corporation (COM (2007) 71 final).

\(^7\) A full version of the four steps is found in Appendix 7.
\(^8\) An illustrative time table of the stages of an APA is provided in Appendix 8. However as mentioned, this is only an illustrative time table and complex cases could take a longer time, but there shall be an effort from all parties involved to keep the time level to a minimum.
Even if the corporations cannot be forced to enter into bi- or multilateral APAs, these can be considered by the tax authorities when they receive applications for unilateral APAs. Also a unilateral APA can be rejected where the tax authorities feels that a bi- or multilateral APAs, or in some cases no APA at all, are more appropriate (COM (2007) 71 final).

Where found necessary, i.e. in the case of dispute avoidance, the accessibility for SMEs is facilitated with the possibility of applying for APAs (COM (2007) 71 final).

7.3 APA legislation in Sweden

7.3.1 Introduction

As recent as last year, 1st of January 2010, the legislation concerning APA in Sweden was implemented in the Swedish tax law, Lag (2009:1289) om prissättning vid internationella transaktioner (Skatteverket, 2010). In the supplementary constitution, Förordningen (2009:1295) om prissättningsbesked vid internationella transaktioner, additional information regarding what shall be included in an APA application can be found (SFS (2009:1295)). The main reason for why Sweden chose to implement APA legislation was to create an opportunity to achieve predictability concerning complex TP issues and to reduce the level of economic double taxation. Therefore it was found necessary to implement a legislation which makes it possible to achieve these goals in relation to other countries with APA legislations (Prop. 2009/10:17). Since TP legislations has become complex and creates a heavy administrative burden on corporations, one further reason for the implementation of Swedish APA legislation was to decrease the potential conflicts arising from complex TP situations (Höglund, 2007).

It was in the year of 2007 that the Swedish tax authorities got the mission to examine the possibility of implementing APA legislations in Swedish tax law (Regleringsbrev, 2007). Then the Swedish government presented the proposition, 2009:10/17 Prissättningsbesked vid internationella transaktioner, in October 2009, which was accepted by the Swedish parliament on the 25th of November the same year (Prop. 2009:10/17) (Riksdagens protokoll, 2009/10:37). In this proposition it was stated a suggestion on making it possible for corporations to apply for notifications with
regards to future price settings of international transactions that are performed within a community of interest. According to the preparatory work such applications shall be handled by the Swedish tax authorities. Such notifications shall however only be given in situations when the application is performed by an corporation who are or can be expected to be guilty to pay taxes in accordance with the Swedish Income Tax Act (Jernkrok and Jakobsen, 2009). Some of the purposes of an APA system are, according to the Swedish tax authorities, to ease the negotiations between concerned authorities concerning MAP with respect to questing regarding price setting and to create a greater predictability. Therefore the tax authorities found it necessary that such a system was implemented by law (SKV 131 724386-07/113).

The fact that Sweden now has implemented legislations concerning APA can be seen as a step towards harmonization with the recommendations regarding APA provided by EU and OECD (Jernkrok and Jakobsen, 2009). Swedish APA legislation is based on the guidelines found in both OECD TP guidelines and in the EUJTPF (Prop. 2009/10:17). One way which makes this clear is that the government refers to the TPM which can be found in chapters two and three of the OECD TP guidelines (Bernsen et al., 2007). Since it did not exist any APA legislation in Sweden before the implementation in January 2010, it was found possible to study other countries experiences from this type of legislation to gain a successful APA legislation in Sweden (Höglund, 2007).

Jernkrok and Jakobsen (2009), argue for that the costs of applying for an APA in Sweden are too high, this since they assume that a well thought out application of the tax payers and a well performed review, performed by the Swedish tax authorities, of such applications will make application costs unnecessary. They state in context to this that the applicants will nonetheless have to put in a substantial amount of resources in the application process, and have therefore already paid their part. Jernkrok and Jakobsen (2009) also state that the application fee together with other costs such as those for consultants and costs of time spent can make smaller MNEs put off on the idea of applying for an APA.

In Sweden the issuing of an APA and the information given in the application of an APA are classified. The reason for this is that the information concerning APA can be
sensitive for the corporations if it were to be available for everyone. It shall be mentioned that also the issuing of renewal of an APA is classified (Prop. 2009/10:17).

7.3.2 Preparatory work

7.3.2.1 Introduction

Even if did not exist any similar legislation before 2010’s implementation of APA legislation, it sometimes happened that the government entered into a MAP, in accordance with Article 25 of OECD TP guidelines, and on those grounds issued a form of APA. In those types of APAs it has been stated that the Swedish tax authority shall, in co-operation with the applying corporation, take such actions that are necessary in order to fulfill the requirements of the APA. There exists no established concept for APAs, why APA is the concept that will be used even for the Swedish legislation (Prop. 2009:10/17).

The reason for why APA legislation seemed to be necessary in Sweden was that it would provide a complement for the existing traditional administrative and legal mechanisms that exist. Such a complement will help to solve questions that can arise concerning price settings (Prop. 2009/10:17).

It is possible for corporations to apply for renewal of their APA, however there are no legislation concerning such a procedure in the Swedish legislation. It also exist the possibility for applying for a retroactive application of an APA, also known as a roll-back treatment of APA, there is however no specific legislation in Sweden which regulates this. Instead it is stated in the preparatory work that the guidelines found in EUJTPF concerning roll-backs can be seen as a useful guidance. However, it is mentioned that the roll-back of APA shall only be issued as a secondary result of the initial APA application. A roll-back means that the issued APA can be used for time periods previous to that when the application is handed in (Prop. 2009/10:17).

It is believed that somewhat more than five to ten applications of APAs will be handed in yearly and that such applications mostly will be provided by larger international MNEs. The reason for why large MNEs are believed to be the most frequent applicants are that they are more likely to enter into international transactions within their
corporate group which are of a such nature and complexity that there exist an interest for APAs (Prop. 2009/10:17).

7.3.2.2 **What shall be included in the application?**

Since a decision of APA is applicable for situations that occur in the future, there are high demands of the information that needs to be included in the application. However since it is tricky to state exactly what shall be included in each separate application, the legislation only implies that the necessary information for issuing an APA needs to be included in the application. Nonetheless in the preparatory work some information that would normally be required is stated. Such as names, addresses, years, concerned countries, a comparability analysis, a function analysis, a description of the concerned corporations and a description of the chosen price method. When it comes to the information concerning the chosen price method it shall also be given information on why this is an appropriate method, the assumptions done that serve as a ground for the price method. It shall also in the application be included other information that can be seen as to be central for issuing an APA. The required information depends on the type and complexity of the transaction and on the chosen price method (Prop. 2009/10:17).

Since these requirements are equal to the requirements made by other countries it also helps to create a guarantee that the APA procedures are performed as effectively and as quickly as possible (Prop. 2009/10:17).

7.3.2.3 **Bilateral APAs**

An APA can only be issued in Sweden if the other involved country and Sweden have entered into a MAP, which is a part of an entered tax convention with the same country, concerning the price setting of international transactions. Due to this there is only a possibility to issue bilateral, and not unilateral, APAs in Sweden. Therefore, if another country is unable to enter into a MAP with Sweden, then Sweden cannot issue an APA. Unilateral APAs shall not, at least not for the time being, be issued since it does not seem to help decrease the potential risks of economic double taxations and increases in predictability. Multilateral APAs can be issued, but due to the rarity of multilateral tax conventions there is no legislation concerning what such an APA will look like and it shall therefore instead be discussed if such a situation occur (Prop. 2009/10:17).
7.3.2.4 Application fees

If an application procedure of APAs shall work well it is crucial that there exist a sufficient amount of resources for the handling of the application. An APA implies substantial handlings which in turn lead to both increased costs of handling but also sometimes increased costs of travels and therefore the Swedish government believe that the corporations applying for APAs shall bear their burden and share the administrative costs. Another motivation for having application fees is that this reduces the number applications concerning situations where the risk of economic double taxation is low and as such situations where there is no need for issuing APAs (Prop. 2009/10:17).

The current fee for applying for a new APA is 150 000 SEK, whilst the costs of renewals of APAs are, for the time being, 100 000 – 125 000 SEK. The higher of these two last mentioned fees are if the renewal includes any kind of changes (SFS (2009:1295)). If the application is rejected or withdrawn by the Swedish tax authority then it exist a possibility for the corporations to get a refund, in whole or in part, of their application fee (Prop. 2009/10:17).

The Swedish tax authorities suggested in their report, 131 724386-07/113, that there shall be no fees for applying for APAs in Sweden. Their judgment is that an APA system shall be considered to be a way to find an acceptable solution for all involved parties. It shall therefore be seen as an interest of all who are involved that an APA system comes into place and that such a system does not have any limiting features. Therefore the Swedish tax authorities believe that the procedure of issuing APAs shall be considered to be a part of the service that they provide for corporations and hence be fee free. However, they also stated that due to potential additional costs that might arise after the system have been in place for some time, that the free fees might had to be reconsidered (SKV 131 724386-07/113).

7.3.2.5 Potential consequences

What can the potential consequences be for applying for APA in Sweden? It is not only the MNEs that suffer from potential consequences when applying for APAs, there are also public financial consequences and consequences for the Swedish tax authorities (Prop. 2009/10:17).
There is no legislation concerning sanctions if the applying corporation includes false or wrong information in their application. The reason for this is that it is assumed to be in the interest of the applicant that an APA is issued, and therefore the applicant is believed not to take advantage of the situation (Prop. 2009/10:17).

The application process of APA is both time and resource demanding, the application is large-scale and will require a lot of time when it comes to gathering the required information. With respect to this the administrative burden of applying for an APA can be said to be placed on the corporations, this including the application fee that they have to pay. However, it shall not be forgotten that applying for an APA is voluntary and shall only be done for complicated and large scale questions concerning price setting. Also, the corporations do already have to keep some of the required information with respect to Swedish documentation requirements (Prop. 2009/10:17).

One positive consequence of the APA is that it implies predictability for the nearest three to five taxation years. Which means that the risk of long and costly audits, that can be the case if the applied price method does not lead to a price set at arm’s length, is decreased. It will also as previously mentioned decrease the risk of economic double taxations and lengthy negotiations between the tax authorities of different countries. As such there are, despite the application fee, a decrease in costs in the sense that an APA helps to prevent costs that arises from audits and court procedures (Prop. 2009/10:17).

7.3.3 Constitution SFS (2009:1295)

In the constitution to the Swedish APA legislation it is stated that information given by MNEs in the application of an APA shall be stored in a way so that unauthorized persons cannot get in touch of them. If possible such information shall be stored separately from other documentation (SFS (2009:1295)). This helps to protect the potential risks of that secret company information can get accessed by anyone.

The constitution also contains a short list of what will be included in the application for an APA in Sweden. Such an application shall, amongst other things, include information concerning the involved corporations and what type of pricing method that will be used and why. It is also in the constitution where the application fees are
regulated, and it is also stated here that the fee shall be handed in to the Swedish tax authorities at the same time as the application is handed in (SFS (2009:1295)).

7.3.4 Legislation SFS (2009:1289)

Legislation SFS (2009:1289), *Lag (2009:1289) om prissättningsbesked vid internationella transaktioner*\(^9\), is the Swedish legislation concerning APAs. The content of this legislation is presented here.

Swedish APAs can only be issued after the corporation has applied to the tax authorities for the APA (Bergqvist and Tyllström, 2008). The fact that it is the Swedish tax authority that is the competent authority that is issuing APAs and makes other decisions in accordance with this legislation is stated in paragraph 7 (SFS (2009:1289)).

Paragraphs 8 to 11 are those paragraphs that regulate the application of APA, where paragraph 8 declares that there are corporations that are or can be expected to be liable for taxes according to the Swedish Income Tax Act that can apply for an APA in Sweden. The paragraph further declares that also such corporations which are covered by a tax convention can apply for a Swedish APA. If a corporation wishes to do so they shall be given the opportunity to attend to a pre-filing meeting in order to be able to discuss the prerequisites of an APA, this is to say if there are no obvious reasons which tell against this, this opportunity is stated in paragraph 9. To whom an application shall be handed and what information it shall include, and the fact that the application shall be in a written form is declared in paragraphs 10 and 11 (SFS (2009:1289)).

It is in paragraphs 12 and 13 where the prerequisites for APAs are stated, such prerequisites include such things as that the application shall not include issues concerning simpler conditions and/or magnitudes. It is also stated that there is a requirement of a MAP and tax conventions between the involved countries, and that the MAP shall be in line with the application or be accepted by the corporation. It shall also be the case that the arm’s length principle is fulfilled by applying the price setting

\(^9\) A full version of the legislation, in Swedish, is found in Appendix 9.
method used in the application (SFS (2009:1289)). The prerequisites mentioned here is however only a part of the prerequisites stated in the legislation.

What is included in the issued APA is stated in paragraphs 14 to 16, in paragraph 14 it is stated that the APA shall be in line with the MAP and that the APA shall contain the terms and conditions that shall be applied to ensure the applicability and validity of the APA. According to the same paragraph the APA shall also contain how the price setting of certain future international transactions will be performed. The APA is normally valid for three to five years, but can in some cases be valid for a shorter or a longer time period. The Swedish tax authorities are, according to paragraph 16, compelled by the APA when considering the transactions and the corporations covered by the APA, this is to say if nothing else is stated in paragraphs 18 and 19 (SFS (2009:1289)). If a Swedish corporation chose to deviate from the issued APA, it shall be kept in mind that this opens the door to judgment proceedings and with this the risk of a declined APA (Bergqvist and Tyllström, 2008).

What are the exemptions stated in paragraphs 18 and 19? The tax authorities can under some circumstances, such as if the applying corporation demands it, change the APA, something which is stated in paragraph 18. Another such circumstance is if the terms and conditions of the APA are not followed. It shall be mentioned that there are some other prerequisites that need to be fulfilled before such changes are performed. In accordance with paragraph 19 the tax authorities can also in some cases withdraw the APA, such cases can include when the APA are not being used or the MAP which the APA is based on have ceased to be applicable (SFS (2009:1289)).

Paragraph 17 of this legislation is placing responsibilities on the applying corporations, it declares that corporations have to, without any considerable delay, inform the Swedish tax authorities if the APA is not being applied or if any circumstances arise that implies that the APA cannot be applied (SFS (2009:1289)).

There are some other rights and responsibilities that a corporation gets imposed with by this legislation. The tax authorities can urge the corporation to provide further information and decide together with the corporation on how, where and to what extent a control of the information shall be conducted. Besides this, the corporations shall also be given the opportunity to give remarks before the issuing of the APA, if such a
remark cannot be seen as to be unnecessary. These rights and responsibilities are stated in paragraphs 20 to 22 of this legislation (SFS (2009:1289)).

How large the application fees are is, as previously stated, declared in the constitution SFS (2009:1295), but the fact that the fee shall be handed in together with the application of the APA, is declared in paragraph 23 of the Swedish APA legislation. However, in paragraph 24 it is declared that in some cases the Swedish tax authorities can disburden a corporation from a part of or the whole fee, if there are special circumstances for doing so (SFS (2009:1289)) (SFS (1999:1295)). Which these special circumstances are cannot further be mentioned, however one example which is mentioned in the preparatory work is when smaller corporations apply for APA. In these cases consideration shall be taken to the size and turnover of the applying corporation. However, this is not the only special circumstance and whether there are any special reasons for a relief of fees shall be determined on a case-to-case basis. In the preparatory work for the Swedish APA legislation it is declared that if the APA is rejected, it might in some cases be found unreasonable that the fee shall be withhold. It shall therefore be considered by the Swedish tax authority in such situations if the whole fee or at least a part of the fee shall be handed back to the applying corporation (Prop. 2009/10:17).

It shall also be mentioned that no appeal of APAs and other decisions in accordance with this legislations are allowed (SFS (2009:1289)).

7.4 APA legislation in Germany

7.4.1 Introduction

The beginning of the 21st century brought with it major developments within TP in Germany. During 2003 comprehensive TP documentation requirements were introduced in Germany (Wilmanns and Kieliszek, 2005/2006). In October 2000 Germany issued draft guidance on APAs with the finalized guidance published on the 5th of October 2006 (Dagnese, 2007). The program of APA, as a part of the newly found relevance of TP, was partly established since Germany’s economy was facing substantial challenges to remain globally competitive (Wilmanns and Kieliszek, 2005/2006). In Germany corporations can, if they have tax liabilities in Germany,
apply for APAs, however Germany does not have any formal legislation regarding how the application of APA shall proceed. There are for example no legislation stating how to perform the application, how the negotiations regarding APA shall go about and no regulation concerning how the APAs shall be issued. Nor are there any formal demands for complexity or any demands for holding meetings before issuing an APA, however these are seen as necessary for a practical reason. The fact that the German tax authorities are not allowed to enter into binding commitments with tax payers, is something that is stated in the German constitution. Due to this, the tax authorities instead issues administrative decisions which serves as APAs. Regulations or guidelines regarding the procedure of this issuing of administrative decisions was issued by the tax authorities during the year of 2006 (131 724386-07/113). In line with several other countries, Germany follows the guidelines provided by the OECD, concerning APA, but they also follow the practice of the majority of industrialized countries. Article 25 of the OECD model tax convention is the legal basis for German APAs. Since agreements concerning taxation are not allowed under German tax law, article 25 in OECD model tax convention is used for issuing APAs, if included in an applicable double taxation convention (Kroppen and Eigelsohon, 2008). To be able to provide the opportunity of an APA Germany uses the MAP APAs. By doing this the involved countries can enter into binding agreements concerning the content of an APA. This procedure implies that the tax authorities represent the corporation and therefore there is no binding agreement between the two. Instead the APA consists of an administrative record, which as such is not binding, however in line with the international tax conventions the tax authority is considered to be indirectly bound by this record. The German tax authority can therefore be said to be bound to the terms and conditions which have been negotiated by the MAP APA (Höglund, 2007). An application for APA does not have any immediate effect on other non-judicial and judicial proceedings. It has to be stated by the corporation that they are aware of that the German tax authorities are only obligated to follow the APA if the facts on which it is based on are followed, they are provided with annual reports and if the critical assumptions are observed. If the critical assumptions are observed and the terms and conditions of the APA are met then the German tax authorities are bound by the APA and are as such not authorized to deviate from results based on the APA during audits.
or in assessments. In other words, the tax authority cannot for example make changes based on another method of setting TP. The corporation is not, however, obligated to meet the facts on which the APA is based. If not followed then neither the binding ruling nor the MAP have any legal effects (Kroppen and Eigelshoven, 2008).

As Sweden, Germany has a legislation stating that TP needs to be set at an arm’s length distance, and if the TP is incorrect adjustments of a corporation’s income shall be made. This legislation concerning TP in Germany can be found in Außensteuergesetz, or the Foreign Tax Code. Beyond this there is also an administrative principle released by the German Ministry of Finance which concerns APA, known as the Information leaflet for bilateral or multilateral competent authority procedures under tax treaties for binding advance rulings on TP matters of multinational enterprises (so-called “advance pricing agreements” – APAs), 5th October 2006, BStBl. II 2006 at 461. In this report it is stated that The Ministry of Finance in Germany has delegated their responsibility to the Federal Tax Office, which has a special department handling APAs, when it comes the APA program. International tax law specialists from the state and local auditing teams support the Federal Tax Office. It also exists something which is referred to as Administrative principles for the examination of income allocation in the case of internationally related enterprises, (Decree of the Federal Ministry of Finance, 23 February 1983, BStBl. I 1983, at 218), where some German guidelines concerning APAs can be found (Kroppen and Eigelshoven, 2008).

From 2004 Germany have a penalty regime in their General Tax Code, Section 162. This implies that if an adjustment of a TP is needed, then a penalty of five to ten percent, with a minimum of € 5 000, of the profit adjustment is raised, in the form of a surcharge (Transfer Pricing Associates, 2010a).

7.4.2 The process of APA

A normal German APA process takes approximately 18 months from application to conclusion, but it can however take several years to finish (Schnorberger, 2007). The applying corporation can at any time withdraw their application, and the issuing of an APA is never done against the wishes of the corporation. A German APA can be applied for periods previous to the issuing of the APA if the corporation can show that
the practical circumstances have been the same during these previous years. However, this is seen as a MAP since the German tax authorities are not legally bounded by the APA (131 724386-07/113). The usage of pre-filing meetings are encouraged by the tax office, so that corporations can see the likelihood of the success of an APA and also learn more about the APA procedure. Pre-filing meetings can be held anonymously, but if so the statements given by the Federal Tax Office are less reliable, and also then the tax authorities of the other country cannot join the conference (Kroppen and Eigelshoven, 2008). Before the procedure of APA is started the application have to be submitted, and there is no allowance of submitting any application at a later stage (Fiscal code of Germany, 2009). In order to apply for an APA the corporation has to be covered by a double tax convention and the application has to be in a written form. The applicant further has to demonstrate its legitimate interest in the conduct and conclusion of the advance MAP. The Federal Tax Office can grant relief regarding the requirements of the application for SMEs, which leads to more simplified procedures for such corporations (Kroppen and Eigelshoven, 2008).

The term of the APA is normally three to five years, something that is suggested by the German tax authorities. However, it is possible to file for a longer-term APA if the other involved countries agree and a corresponding application is handed in. This application shall state that the future facts correspond to the facts on which the current APA is based. The start of the term of an APA usually is at the fiscal year when the application for the APA is filed. In some cases the start can be earlier, in cases where there are no filed tax returns or missed legal deadlines to file tax returns at the time of the filing of application, something which is known as a roll-back or a retroactive application of an APA. Records of the APA term have to be corresponding to the records of previous years in order to perform a roll-back (Kroppen and Eigelshoven, 2008).

Unilateral APAs are not issued by the German department of finance, this implies that it is a requirement that other countries are involved in the process and it also requires that the process is based on MAPs such as that which is found in Article 25 in OECD model tax convention (131 724386-07/113). The reason for why unilateral APAs are not encouraged by the German tax authorities is that they do not help to achieve the
goal of eliminating double taxation and provide certainty (Bricker and Amann, 2001). If unilateral APAs are entered with tax authorities of other countries, Germany are not bound by such APAs (Kroppen and Eigelshoven, 2008).

The application fees for applying for an APA in Germany are based on the number of countries, excluding Germany, which are involved in the application (131 72436-07/113). Application fees for APA in Germany are determined by the Federal Central Tax Office and such determination shall be done before the procedure of APA is opened, also the fee shall be paid before the opening of the APA procedure. The current fees for SMEs are € 10 000 for a completely new application and € 5 000 – 7 500 for renewals. For large corporations the application fees are € 20 000 and renewal fees are € 15 000 – 20 000. The fee for renewals shall not be paid if the renewal is initiated by the Federal Central Tax Office or by the other country involved. The Federal Central Tax Office can in certain cases reduce these fees if they imply an unreasonable hardship for the corporation and if it is determined that a particular interest regarding the implementation of the APA procedure exists at the revenue authorities. It is no refunding of fees if the APA procedure is failed, if the application is withdrawn or rejected (Fiscal code of Germany, 2009). The reduction of fees for SMEs is done with 50% (Kroppen and Eigelshoven, 2008).

To provide for an APA the applicant has to extensively present and inform all necessary documentation and at any time the tax authorities can ask for more information, and in order to avoid delays the corporation shall provide such information as quickly as possible. The corporation shall also, as quickly as possible, inform the Federal Tax Office of changes regarding the content of the application. As mentioned several times previously in this thesis, what an APA application shall include varies from case to case, however there are some general information that shall be included. Such information includes the involved countries and TP method. The application has to, if requested by the tax authorities, be translated by the corporation (Kroppen and Eigelshoven, 2008).

The potential risk of double taxation and the interest of easier resolving TP issues are two things that are considered when the tax authorities shall make the decision of approving an APA. Reason for rejecting and APA is, amongst other things, that the
corporation refuses to provide sufficient information or that the method in the application is to be considered inappropriate. However, the corporation is informed and granted an opportunity to address the reason for rejection before the application is officially rejected (Kroppen and Eigelshoven, 2008).

If the other involved country has difficulties implementing the APA, or if there are any discrepancies regarding the MAP, the corporation shall inform the Federal Tax Office, which can contact the other country and decide by MAP with the state supreme tax authority whether new negotiations shall be sought. If the corporation, after the APA is issued, enters into a situation of double taxation with a third country which does not acknowledge with the results of the APA, then the Federal Tax Office will enter into a MAP with this country. If a MAP is not entered the Federal Tax Office will at least participate in a procedure for eliminating the double taxation, this causing the third country to change their tax assessments (Kroppen and Eigelshoven, 2008).

The possibility of renewing a German APA exists if the applicant is able to demonstrate that the same circumstances will continue or if adequate adjustments will be made for the terms and conditions in the original APA. If it is a change in the originally agreed APA conditions or if the current facts are no longer consistent with those stated in the APA, and then the APA can be revoked, in whole or in part. If this happens then the German tax authorities are no longer bound by the APA and must as such inform all involved foreign counterparties (Dagnese, 2007).

### 7.4.3 Consequences of APA

The complex nature of the German APA is believed to be the major reason for why so few APAs have been issued in Germany, it is also said to be the reason for why the German APA program’s applicability only have lead to a limited degree of knowledge around the process for both tax authorities and corporations (Höglund, 2007). According to Bricker and Amann, (2001), the German tax authority prefers the usage of audits and does therefore not encourage requests for binding rulings. Due to this German APAs have been strictly restricted to exceptional cases and therefore it exist very little experience of APAs in Germany (Bricker and Amann, 2001). As mentioned, the German tax authorities have been reluctant to participate in negotiations for an
APA. However this attitude has somewhat changed and several state ministries of finance have issued regulations on APAs (Eilers and Schiessl, 2000).

The reasons for why APAs have become a more attractive international tax planning instrument for an increasing number of German corporations are a tightened regulatory environment, an increase in TP audits and the increased openness of the tax authorities (Schnorberger and Wingendorf, 2005).

7.5 APA legislation in the Netherlands

7.5.1 Introduction

In 2001 the APA process was introduced in the Netherlands by the Dutch Secretary of Finance. The APA program was implemented due to the fact that advance certainty is attractive to multinationals and advance rulings such as an APA were issued primarily because it was considered to lead to increased investments in the Netherlands. An increase in investments will lead to an increased taxable income in the Netherlands, without any real cost to the tax authorities (Betten, 2002). However, the Dutch tax legislation does not contain any specific TP legislation, therefore the APA program was based on the OECD TP guidelines. Nonetheless, the Dutch decree provides a detailed list of what shall be included in the application of an APA and in the issued APA (Meussen and Velthuizen, 2002) (Sporken, Vögele, Bader, Luquet, Laisney and Musgrave, 2001). It is only possible to apply for an APA in the Netherlands if it exist a double tax convention between the involved countries and if the tax convention includes a counterpart to article 25 of the OECD model tax convention (prop. 2009/10:17). Unless another period is reasonable, the duration of an APA is four to five years and an application for an APA must meet the requirements of Dutch TP rules (Sporken et al., 2001). However, ten years is the maximum time-period of a Dutch APA and the reason for extending the period of time can be large investments and long-term contracts. Normally, an APA is applicable on future transactions, but it is possible to apply an APA on previous transactions. (Prop. 2009/10:17).

The APA in the Netherlands has the status of determination agreements and therefore it is binding for both the corporation and the tax authorities (Betten, 2002). The APA is a binding agreement as long as all facts that are mentioned in the process and that were
presented at the time the APA was applied are conformed. Due to this it is important that the corporation reviews all relevant changes and inform the tax authorities of these changes in a timely manner (Bratchell, 1999).

APAs can be unilateral, bilateral or multilateral (Sporken et al., 2001). However, bilateral or multilateral APAs are preferred, which is in conformity with the OECD TP guidelines. These guidelines also provide that the tax authorities shall encourage the corporation to apply for a MAP (Betten, 2002). The MAP and arbitration cases are handled by a special department of the Ministry of Finance (Parker, 2008). In a survey conducted by Ernst and Young most APAs in the Netherlands involve unilateral APAs (Ernst and Young, 2009). A reason to why corporations prefer unilateral APAs is that they include agreements which are most similar to what the corporations are used to and the tax authorities are familiar with the process of issuing advance certainty (Betten, 2002).

In order to get an understanding of the APA process, it is necessary to get an understanding of the respective government offices involved in the process. Those who are involved in an APA request in the Netherlands, besides the applying corporation, are the competent tax inspector, the APA team located at the Local Office for Business Corporations/Large Companies in Rotterdam, the Coordination Group Transfer Pricing and in the case of bilateral APA request, the competent authority office at the Ministry of Finance. However, with respect to the APA request the tax inspector is the primary contact (Betten, 2002).

It exist no specific penalties for an incorrect TP, however, penalties of 25%, 50% and 100% of additional tax, or surcharges, are applicable. The size of the penalty depends on the degree of intent to avoid tax or degree of gross negligence (Transfer Pricing Associates, 2010b).

7.5.2 The process of APA

There are no application fees when applying for an APA in the Netherlands (Prop. 2009/10:17). The regulation concerning APA was not considered to provide the benefit of reduced tax liability (Betten, 2002).
The Dutch tax authority starts by reviewing the application received to conclude if the request is applicable to an APA process (Prop. 2009/10:17). The APA process includes the following steps.

1) In the pre-filing phase the corporation will be informed of all relevant parts in the process of an APA, to consider what form of APA that is preferable. Most importantly, at this stage the corporation can consider whether there is a chance to successfully come to an agreement on the TP issues involved.

2) The submission is where the official APA application shall be handed out to the competent tax authority who will involve in the APA team. The application will include a description of the corporation’s business, its structure and the relevant transactions involved.

3) After the submission it is time for the audit and discussion, where the APA application will be strictly reviewed.

4) Finally, the Dutch tax authority will discuss and agree with foreign tax authorities regarding methodology and results to come to an agreement (Betten, 2002).

It exist a possibility for a corporation to apply for a renewal of the APA. The process of a renewal is similar to the process of the existing APA, however it is generally expected that a renewal involving the same facts, without any material changes in the facts and circumstances, will result in a less burdensome process and in a reduced level of details. Changes that can influence the TPM and results, in the current APA, are changed market conditions and new thoughts and concepts or comparables in the area of TP or the corporation’s principal business. It is also possible to apply for a roll-back, which means that the current APA will be applicable for years previous to the application-date of the APA (Betten, 2002).

The Dutch tax authority has expressed their interest in voluntarily exchange of information with treaty partners as long as the relevant treaty partner has indicated that they will reciprocate and if current APAs are consistent with this approach (Betten, 2002).
7.5.3 Advantages and disadvantages

One reason for why corporations decide not to use an APA is that while the APA submission serves to determine the arm’s length remuneration for specific transactions, in practice the Dutch tax authority might try to resolve audit issues which are not directly related to the APA submission simultaneously and leverage the final agreement. Netherlands competitive position and its image as a favorable jurisdiction for international business can be greatly enhanced by a tax authority which politely, competently and appropriately determines in an APA whether the corporation has operated at arm’s length principle within the existing legal framework as declared in article 8b of the Corporate Income Tax Act (Betten, 2002). The APA process in the Netherlands is well established and accessible to all corporations. There are approximately 230 to 280 of APA applications every year and the average duration of the APA process is 54 days (Ernst and Young, 2009).

7.6 APA legislation in the U.S.

7.6.1 Introduction

The APA program was implemented in the U.S. on the 1st of March, 1991. The lack of any reliable method for determining TPs which were to be certainly accepted by the IRS in case of an audit or to be sustained by a court in the case of a judicial process was the reason for why corporations found it necessary to implement APA legislation (Fallon, 1997). The implementation of APA was also found to resolve TP disputes, as well as to provide an alternative to prolonged, expensive and inefficient processes of TP issues (Calderón, 1998). Another reason to why the legislation was implemented was to avoid transactional and net adjustment penalties. During the process of APA, the IRS, which administers the Internal Revenue Code (IRC) reviews and agrees to the corporations’ TP method before the corporation implements it. IRS will not make any adjustments of the corporation’s TP in any future audits in the case of a successful APA (Schadowald and Misey, 2005). In the U.S., penalties can be up to 40% of the tax adjustment. If the offending TP is 200% more than the arm’s length price, the penalty will be 20% (non-tax deductible). If the offending TP is 400% more than the arm’s length price, the penalty is increased to 40% of the tax underpaid. If the TP adjustment
is large in relation to the corporation’s total profit there is an additional penalty (Miller and Oats, 2009).

- “20% of the adjustment if the adjustments exceed $5 million or 10% of gross receipts, and
- 40% of the adjustment if the adjustments exceed $20 million or 20% of gross receipts” (Miller and Oats, 2009, p.335).

Penalties can be avoided if it is a reasonable cause to the incorrect TP and the corporation has acted in good faith with respect to the transaction (Markham, 2006).

APA is not suitable for every corporation is and even it appears suitable, circumstances can make an APA to be an inappropriate method. Therefore, considering issuing an APA shall be made on a case-by-case basis. One factor to consider before using an APA is the extent of the corporation’s related transactions. If the transactions are performed within a MNE, the corporation is highly exposed to domestic and foreign adjustments and double taxation. One type of corporation, which might consider requesting an APA, is a corporation located in a country where the tax authority has substantial resources, and where the tax situation makes the certainty of home tax liability more important than minimizing domestic tax liability (Calderón, 1998).

The U.S. TP approach has been highly influential in the rest of the world over the past decade (Atkinson and Tyrrall, 1999). Section 482, which is found in the IRC, defines the arm’s length principle (Levey and Wrappe, 2007). This prompted many other countries to develop their tax bases from perceived MNEs over compliance with the U.S. regulations (Atkinson and Tyrrall, 1999). The U.S. APA program is regulated in Revenue Procedure 2006-9, and is meant to ease TP issues under Section 482 (Levey and Wrappe, 2007).

Even if a U.S. corporation is free to include a request for roll-back in their APA application, they shall be aware that the IRS can on its own initiative determine that the agreed upon APA terms shall be applicable for years previous to the APA (Levey and Wrappe, 2007).

In the U.S. the margin for bilateral versus unilateral APAs requests are at least two to one (Levey and Wrappe, 2007). A corporation can apply for unilateral, bilateral or
multilateral APAs. However, if the corporation apply for a unilateral APA, it has to be an appropriate reason for this. The corporation has the opportunity to request for a pre-meeting to discuss the different forms of an APA in order to make the most appropriate decision (Prop. 2009/10:17). Bilateral and multilateral APAs are generally preferable to unilateral APAs when competent authority procedures are available with respect to the foreign country/countries involved, since these kinds of APAs minimize corporation and governmental uncertainty and administrative cost (Parker, 2008).

### 7.6.2 The process of APA

According to the legal effect of an APA, the procedure is a binding agreement between the IRS and the corporation (Parker, 2008). If the corporations fail to follow the APA, the IRS has the opportunity to either fulfill the APA or to withdrawn or reject the process (Prop. 2009/10:17). The cost for applying for an APA in the U.S. varies from $22,500 – 50,000, depending on the yearly gross income or on the aggregated value of the covered transactions, where SMEs pays $22,500. What constitutes as a SME is, as mentioned, dependent on the yearly gross income or on the aggregated value of the covered transactions. Other corporations have to pay $50,000 for the initial application and $35,000 for a renewal. Performing an amendment of an APA on the other hand costs $10,000. (Parker, 2008). The average duration of an APA process is approximately 21.5 months for unilateral APAs and 38.1 months for bilateral APAs (Ernst and Young, 2009). Even if an APA process might take as long as 38 months, the corporation still saves time by using an APA. The IRS has declared that TP issues might take eight years or more to solve in an audit situation (Markham, 2006). The corporations shall propose a TPM to the IRS and provide data showing that the TPM will produce arm’s length results for intercompany transactions. The IRS is then required to evaluate the request by analyzing the data together with any other relevant information. After discussion between the corporation and the IRS, if the proposed TPM is accepted, the parties will execute an APA confirming the TPM. The IRS can also negotiate a collateral TPM agreement with appropriate foreign competent authorities within income tax conventions (Viehe, 1991).

In the U.S. it is a special APA team that deals with APA applications. This APA team consists of a team leader, an APA program economist and/or an service operating
division economist, a large and mid-size business international examiner, a division counsel attorney and in bilateral or multilateral cases a competent authority analyst. It is the team leader that will make sure that every team member will receive a copy of the APA application for review (Parker, 2008).

The chosen TPM must be consistent with the principles of Section 482 of the IRC and its regulations. If a corporation wants to use a method which is permitted by the Section 482, then it has to show why none of the methods specified in the Section 482 are applicable. The TPM must be consistent with the arm’s length principle, supported by both available and reliable data, and open to efficient administration. The process of APA shall result in agreement on appropriate TPM, the factual basis of transactions and the expected results of the method. However, it might only cover the two first items in certain circumstances (Viehe, 1991).

The corporation shall submit copies of and documents relating to the proposed TPM and also ensure that all data is labeled, indexed and referenced properly in the request. The corporation shall be aware of that the materials become part of the IRS’s file and will not be returned, therefore original documents shall not be submitted. If the records which are necessary are too voluminous for transmittal with the request, the corporation shall be prepared to describe the items, certify that they exist at the time the request is submitted, state where they are located and whom the IRS can contact to secure the items. They shall also confirm that the items will be promptly available (Viehe, 1991).

The corporations shall also provide an explanation of their positions and the government’s positions on previous and current issues at the examination, appeals, judicial or competent authority levels, as well as any resolutions relevant to the proposed TPM. Similar information might also be required by foreign tax authorities (Viehe, 1991).

The corporation can apply for a renewal of an APA by using the procedures for initial APA applications. Corporations interested in a renewal are encouraged to apply for a pre-filing meeting. There the corporation and the tax authorities conduct discussions in order to conclude whether an APA renewal process is achievable. The renewal application shall be filed approximately nine months before the expiration of the APA
term. According to Parker (2008) there are some conditions which must be fulfilled for a renewal of an APA, the same laws and policies used on the current APA must be applicable. It exist no substantial differences between the corporation’s proposed TPM and the TPM used under the current APA, it has not occurred any material changes in the corporation’s facts or circumstances since the parties entered into the existing APA. For bilateral APAs there are further conditions that needs to be fulfilled, the roll-back or closed year considerations have not influenced the TPM in the current APA. If these conditions are fulfilled the APA team begins their evaluation of the renewal APA and starts by considering a continuing applicability of the current APA, using updated comparables as an appropriate comparison. The focus of the renewal lies on any changed facts and circumstances (Parker, 2008).

7.6.3 Different aspects of APAs

The concept of APA used by OECD is very close to that provided by the IRS. OECD has expressed some doubts about how specific an APA can be in prescribing a corporation’s TP over a period of years and also whether the TPM alone can be determined in a particular case. OECD explains its position by arguing that the reliability of a prediction depends both on the nature of that prediction and on the critical assumptions on which the prediction is based, together with the use of a range of results. When considering a scope of an APA, OECD recommends corporations and administrations to pay attention to the reliability of the prediction (Calderón, 1998).

According to the International Chamber of Commerce (ICC), an APA is a binding agreement for the future. An agreement like that can be different from that on which independent enterprises have agreed on, since the future is unknown. This issue can be solved by the use of the so-called “critical assumptions”. However, it can be difficult for a corporation to define the relevant assumptions and to demonstrate that these assumptions are still valid. The validity of an APA is limited to a short period of time, due to the rapidly change in businesses. If the APA can be limited to defining the applicable TPM and avoid defining prices or results, the difficulties around APA can be mitigated according to the ICC. This is the opposite to OECDs point of view, which accepts that an APA is based on a range of results (Calderón, 1998).
8 Analysis

8.1 APA legislation within the scope of Europe

APA was first established in Germany in August 2000, however the new circular concerning APA was not published until the 5th of October 2006 (Calderón, 2005) (Kroppen and Eigelshoven, 2008). Regulation concerning APA in Netherlands was implemented as early as in April of 2001 (Sporken et al., 2001). Sweden was more careful when it came to implementing APA legislations in their tax law regulations, which happened as late as January 1st 2010 (Skatteverket, 2010).

Both Sweden and Germany have chosen to follow the TP guidelines published by OECD and Article 25 in the OECD Model Tax Convention (Jernkrok and Jacobsen, 2009) (Kroppen and Eigelshoven, 2008). Similar to Sweden and Germany, Netherlands followed the OECD TP guidelines concerning APA, when implementing their APA legislation (Sporken et al., 2001). Besides this Sweden has also to large parts used the guidelines provided in the EUJTPF when designing and implementing their APA legislation (Prop. 2009/10:17). In line with these guidelines all three countries have the requirement that the applying corporation must be covered by a tax convention and that there needs to be an applicable MAP in order for an APA application to be possible (SFS (2009:1289)) (Kroppen and Eigelshoven, 2008) (Prop. 2009/10:17). When a corporation wishes to apply for an APA there are also other requirements that needs to be fulfilled, such requirements can be found both in Sweden, Germany and in the Netherlands. However, it cannot be said to be any significant differences between these requirements, this is most likely since they all have OECDs guidelines as a basis for their legislations.

Both Sweden and Germany have chosen to charge an application fee for their APA programs. There are no significant differences in the size of these fees, except for SMEs. Whilst Germany has chosen to explicitly state the fees for SMEs, Sweden has stated in their legislation that the tax authority can in some special circumstances disburden the applying corporation from a part of or the whole application fee (Fiscal code of Germany, 2009) (SFS (2009:1289)). Such special circumstances can be
considered to include the applicants which have a lower turnover or is of a smaller size, such as MNEs. However, to what extent the fees will be lowered and what that will imply for a smaller corporation is to be determined in each specific case. There is another significant difference between the two countries regarding the refunding of fees if the process of APA is failed or if the application is withdrawn or rejected. Sweden has the policy that parts of or the whole fee can be refunded in the case of a withdrawal of an APA or if the tax authority rejects APA (Prop. 2009/10:17). Germany, on the other hand has decided not to refund any part of the application fee in case of a withdrawal or rejection (Fiscal code of Germany, 2009). Opposite to Sweden and Germany, the Netherlands have chosen not to charge any fees for the application of APA (Prop. 2009/10:17).

Unilateral APAs are not allowed neither in Sweden nor in Germany, and the reasons for why this is so are the same. Unilateral APAs are not issued since they do not have a binding effect in more than one country, and due to this they will not help to increase the predictability and decrease the potential risk of double taxation, which are the purposes of an APA. Therefore it is only possible to apply for bi- and multilateral APAs in both Sweden and Germany (Prop. 2009/10:17) (131 72438607/113). The Netherlands, in the opposite of Sweden and Germany, allow for unilateral APAs, however, also the Dutch tax authorities prefer the bi- and multilateral APAs (Sporken et al., 2001) (Betten, 2002).

One of the more apparent differences between the Swedish and the German and the Dutch APA program is that Sweden have implemented their program in their tax legislation whilst Germany and the Netherlands instead have chosen to issue guidelines concerning the process of APA (SFS (2009:1289)) (131 72438607/113) (Sporken et al., 2001). Tax authorities in Germany are not allowed to enter into binding agreements with the corporation, instead the tax authorities will issue an administrative decision that will serve as an APA (131 72438607/113). This whilst Sweden is, by law, allowed entering into binding commitments with the corporation (SFS (2009:1289)). Also the Dutch tax authority are allowed to enter into legally binding agreements with corporations (Betten, 2002).
When it comes to the authority that handles the APA application, it is a significant difference in the resources which are available for this process. In Germany it is a special department within the Federal Tax Office which handles the APA process (Kroppen and Eigelshoven, 2008). In the Netherlands it is a specialized APA team and the Coordination Group TP which handles the APA applications (Betten, 2002). Whilst in Sweden it is the Swedish tax authority that, besides their other tasks, shall handle the application of APA (Prop. 2009/10:17).

The potential penalties for using an inaccurate TP are different between Sweden, the Netherlands and Germany. Sweden and the Netherlands do not have any specific penalties for TP situations (Bernsen et al., 2007). Germany on the other hand has such penalties, which implies that German corporations has to pay surcharges if profit adjustments are needed (Transfer Pricing Associates, 2010a) (Transfer Pricing Associates, 2010b). This is something that can increase the interest of applying for APA, to reduce the risk of potential penalties.

The time periods for which APAs are valid are approximately the same in all three countries, three to five years. However it is possible in all of the three European countries, Germany, the Netherlands and Sweden to issue APAs for a longer time period if it is found necessary (Prop. 2009/10:17) (SFS (2009:1289)) (Kroppen and Eigelshoven, 2008).

8.2 European APA legislations compared to U.S. APA legislation

U.S. implemented their APA legislation in 1991, which means that they were quite ahead in this area compared to the European countries that we have examined in our thesis (Calderón, 1998). This has led to that the U.S. legislation has had an influence on the APA legislations in other countries (Atkinson and Tyrall, 1999).

The U.S. APA legislation is different to the European countries APA legislations in the way that they do not follow the guidelines of OECD, instead the IRS have stated the legislation of the APA program in Revenue Procedure 2006-9 (Levey and Wrappe, 2007) (Calderón, 1998). However, the concept of an APA used by OECD is close to that provided by the IRS (Calderón, 1998). One similarity between the U.S. and
Sweden is that both countries have implemented APA legislation in their tax law legislation (Levey and Wrappe, 2007). This differs from the Netherlands and Germany, which only have certain guidelines concerning APA (Sporken et al., 2001)(131 72438607/113).

Regarding application fees, there are both similarities and differences between U.S. and the European countries. In accordance to Sweden and Germany, U.S. charges a fee for every application (Prop. 2009/10:17). Another similarity is that the U.S., just like Sweden and Germany, has different application fees for different applicants. In the U.S., the application fee is based on the yearly gross income or of the corporation or on the aggregated value of covered transactions, which means that the application fee varies from $ 10.000 to $ 50.000 (Parker, 2008). The difference between U.S. and Swedish application fees is that in the U.S. legislation, in accordance with German APA legislation, it is explicitly stated that SMEs pays a specifically determined lower application fee than other corporations (Parker, 2008) (Fiscal code of Germany, 2009). This is something, which is not explicitly stated in the Swedish legislation, instead it is only declared that the Swedish tax authority in special cases can reduce the level of application fees (SFS (2009:1289)).

Similar to the Netherlands and in difference to Sweden and Germany, the U.S. APA legislation allows for unilateral APAs. However, in accordance to the Dutch tax authority, the IRS advocate for companies to use bi- or multilateral APAs (Parker, 2008).

The U.S. has, similar to the Netherlands and Germany, a special APA department (Parker, 2008). This makes Sweden the only country, amongst the ones we have examined within the scope of this thesis that does not have a specific APA team.

In line with Swedish and Dutch tax authorities the IRS are allowed to enter into binding agreements with corporations applying for APAs (Parker, 2008). This makes Germany the only country, amongst the ones we have studied, whose tax authority is not allowed to enter into binding agreements with their taxpayers.

One reason to why the APA legislation was implemented in the U.S. was because of the penalties (Calderón, 1998). Even if Germany also charge a fee for an incorrect TP,
there is still a big difference in the size of the penalty (Miller and Oats, 2009) (Transfer Pricing Associates, 2010a) (Transfer Pricing Associates, 2010b). This can make the APA program in the U.S. more attractive to the corporations than the ones in Germany, the Netherlands and Sweden. The reason to why it can be seen as more attractive than the Swedish and the Dutch APA is that the corporations do not risk facing any specific TP penalties.

8.3 What will the Swedish APA legislation imply for Swedish MNEs?

Since there are no known studies performed regarding the benefits of APA for Swedish MNEs, this part of our analysis is based on the general advantages and disadvantages presented in chapters 6 and 7 of this thesis.

The fact that the Swedish government have chosen to implement APA legislation, concerning bi- and multilateral APAs, within the Swedish tax legislation will provide for a new opportunity for Swedish MNEs. With this opportunity come both advantages and possible disadvantages for the corporations choosing to apply for a Swedish APA.

When entering into an APA, this means that the Swedish tax authority has co-operated and negotiated with at least one other country’s tax authority concerning the taxation of TP. This will help resolving potential double-taxation situations, which are situations that can be both time-consuming and costly. Therefore an APA program can be seen as the best and most efficient way to avoid an economic double-taxation. Also the risk of non-taxation can be eliminated by the usage of an APA. The risk of audits and potential penalties in Sweden is not something that increases by the usage of TP, however, TP is a complicated matter and it can be difficult to assess a correct arm’s length TP. With this difficulty comes the tax authority’s increased interest of performing audits of TPs. The difficulty of setting a correct TP do also increase the risk of potential surcharges. So by applying for an APA which increases the predictability and certainty of future TPs, it can reduce the risk of audits and lower the potential risk of a penalty. If a Swedish corporation receives an increased predictability of the tax liabilities, by the usage of an APA, they will most likely be more willing to investigate the opportunity of investing abroad. Since the legislation concerning TP
most often can be tricky to interpret and implement in a correct manner an APA can help provide for a greater legal security for corporations. This is so, since corporations which have an APA can predict future tax treatments and therefore also can reduce the risk of future unpleasant surprises regarding internal transactions. Nonetheless even if the issuing of an APA helps to produce predictability for the corporations this does not mean that they are sheltered from future TP audits. However, if a corporation in the case of an audit has an APA, this shall ease the process. Most often future audits of corporations which have an APA, concern the correct implementation of the APA.

Compared to TP examinations the process of an APA is less hostile, this is something which can help to stimulate a free flow of information. The relationship and co-operation between all involved parties is improved by this free flow of information. This will further increase the predictably workable and legally correct result, and can also lead to more objective examination of TPs. This free flow of information and increased co-operation between the involved parties can also lead to an increased harmonization between the involved countries, regarding TP issues. However, it is still a risk for potential disagreements among the involved parties, which means that it is always some risk that the tax authorities will reject the APA application.

It exist a possibility to extend the period of time of an APA, through renegotiations, which can further extend the secure period of time when it comes to setting a TP. Besides this it also exist an option to apply for an APA which covers years previous to the application date, something which is known as a roll-back, which is another possibility for the corporations to extend the period of time of their APA and hence get a extended security regarding TP. Corporations that have applied for an APA does not automatically shelter themselves from TP examinations concerning transactions performed before the application of the APA. This sort of examinations will however be reduced when applying for a roll-back of the APA.

As mentioned in chapter 6.4 of this thesis there are heavy document requirements when applying for APA in Sweden, something which increases the administrative burden for applying corporations. This can be something that makes corporations reluctant and unwilling to apply for a Swedish APA. These documentation requirements can also include information which the corporations can find sensitive in
two ways. There is a risk that this information can leak out to the public, something which can cause damage to the corporation’s business. There is also the risk that tax authorities might misuse this sensitive information, for example when conducting TP examinations or when considering performing audits or not. However, the risk of information leakages to the public is reduced by the legal secrecy, which exists in Sweden, concerning APAs. Even if applying for an APA is both time-consuming and costly, both in the sense of application fees and costs of using consultants but also in the time spent on preparing the needed documentation, it is still seen as to be cheaper than in the case of a TP audit. Therefore APAs can be seen as a way to reduce costs and to save time.

As mentioned it is quite expensive to apply for an APA in Sweden. However, if the application is rejected by the tax authority then it exist a possibility for corporations to get a refund of their application fee.

Another thing which can be seen as an increase of legal security is the fact that the Swedish APA program is implemented as legislation whilst the other European countries, examined in this thesis, have implemented their APA program in the form of guidelines. Since APA is such a new concept in Sweden it can provide for a greater security for corporations that they have a specifically stated legislation, providing for strict guidance on how the process will go about.

One further advantage with the implementation of APA is that it can, when traditional methods cannot be used, be seen as a good way to solve issues concerning TP.

Since Sweden does not have a specific department concerning APA where money and resources are set aside for this specific purpose, it is a risk that the APA program can imply a reduction of resources which would otherwise have been used for TP audits. However, since it exists complexity thresholds in the Swedish APA legislation this will help reduce unnecessary APA applications. The complexity thresholds are found in paragraph 12 of the Swedish APA legislation stating that an application of APA are not allowed if it concerns questions of simpler magnitude and/or is concerning simpler conditions. These complexity thresholds help reduce the number of unnecessary applications, which therefore also shall, to some degree, help limiting the reductions of
TP auditing resources. With unnecessary applications we mean applications handed in by corporations which are not in need of an APA.

That the Swedish tax authority is bound to follow the APA as long as the corporations follow the terms and conditions within it is regulated in the Swedish APA legislation. For corporations on the other hand, it is a voluntary decision to follow the issued APA. However, if the corporation does not fulfill these terms and conditions they risk facing court procedures and gaining tax surcharges. Therefore it is necessary that the applying corporation is certain of their application before handing it in.

8.4 **Will the advantages outweigh the disadvantages?**

The main disadvantages for Swedish corporations appear to be the application fee and the administrative burden that comes with the APA. However, the advantages that come from using an APA seem to outweigh these two main disadvantages. Even if the application fee implies a large financial burden on the corporations, the cost of a TP audit process is most likely larger than the cost of applying for an APA. Also the administrative burden that comes with an APA seems to be smaller than the one which can arise from a TP audit. It is also despite the costs and administrative burden of an APA easier to solve a potential conflict in advance than to wait for a TP audit and then try to solve conflicts and disagreements.

The predictability and legal security that corporations gain from an issued APA will give a great advantage for them, in ways which makes them less reluctant to make international investments and makes them feel more secure regarding their TPs. The fact that an APA also reduces the risk of future TP audits is another thing adding to the secure feeling amongst the corporations. If the corporations are risk averse these advantages are seen to outweigh the high costs and the administrative burden of APA.

Corporations facing a difficulty setting the correct TP can find that the process of setting TPs can be easier with an APA. This does not mean that the corporations using an APA face less work when setting a TP, it only means that an APA will help them setting correct TP.
9 Conclusion

We conclude that the possibility for Swedish corporations to apply for APAs, in general will provide them with advantages. This since an APA increases the predictability of future tax liabilities and the harmonization between countries regarding TP issues. APA also reduces the administrative burden for corporations, such as the documentation needed for the application. Therefore we come to the conclusion that an APA is a management tool that Swedish corporations shall use. The increased predictability will also lead to more international investments, this is beneficial from two perspectives. Corporations will benefit from this since they have the opportunity to invest and establish themselves abroad. It is also beneficial for Sweden as a country, since more foreign corporations are willing to invest and establish themselves in Sweden. Something which leads to increased tax revenues. Using APA will further help corporations which are a part of a MNE to live up to the different legislations and standards regarding bookkeeping which exists in Sweden. These legislations and standards give obligations to corporations to keep information regarding internal transactions and TP, information which can be easier to conduct when having an APA. Other aspects which we find to be beneficial with the Swedish APA legislation are the potential refunding of application fees in case of a rejection and that it is not possible to apply for a unilateral APA in Sweden. A unilateral APA will not increase the predictability of future tax liabilities for corporations since it does not reduce the risk of double taxation.

The fact that it is expensive to apply for an APA will result in fewer applications, since several corporations might not be able to afford this. From a corporations perspective the most favorable thing will be to completely remove the application fee. However, since this is not possible, one option might be to reduce the application fee and instead increase the level of complexity thresholds in the Swedish legislation. By doing this more corporations will have the financial possibility to apply for an APA and at the same time there will not be a risk of an increased number of unnecessary applications. Increasing the possibility for more corporations to apply for APA will increase the predictability of future TP issues for more corporations, making the APA legislation a more equal opportunity. It will also help increase the global trading.
When conducting our cross-country analysis including Germany, the Netherlands, Sweden and the U.S., we find that one additional adjustment of the Swedish APA legislation can be necessary to further increase the advantages of APA. A separate department within the Swedish tax authority, focusing only on applications for APA, will help decrease the time of an APA process. A decreased process will attract more corporations to apply for an APA. If these adjustments are performed we conclude that the Swedish APA legislation will only provide for benefits for Swedish corporations.
10 Further research

We find that it will be interesting to further examine the Swedish APA legislation, such as to distinguish the actual potential benefits that Swedish MNEs have benefited from this new legislation. This since, we can only assume what benefits that Swedish MNEs can achieve from this recently implemented legislation. It would also be interesting to see if the APA program will be successful in Sweden, and to examine whether it will be used on a frequent basis. Finally, we find that it will be interesting to examine the potential developments of the APA legislation.
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Appendix

Appendix I – RÅ 1991 ref. 107

The Swedish SAC case, RÅ 1991 ref. 107, regarding TP is here presented in short.

This case is a well-known one and most cases regarding TP are based on this, and that is also the reason to why we chose to study RÅ 1991 ref. 107. This case shows the potential difficulties with applying the arm’s length principle. This case is about TP between a Swedish corporation named Shell AB and its sister company Shell International Petroleum Company Ltd (SIPC). Shell AB realized oil from SIPC during the years 1976-1981. The assessor claimed that Shell AB's tax result should be adjusted, since Shell AB had render TP to SIPC, which had exceed a price who have been made between two independent companies. We will consider one of the main questions within this case and it is how to set a correct TP according to the arm’s length principle, since this is a relevant part in our thesis (RÅ 1991 ref. 107).

OECDs guidelines made the groundwork and through this the CUP was the most suitable method when MKSR estimated the arm’s length price on oil, where a comparison between the price actually paid and different types of prices on the market for oil were made. The problem was that Shell AB used the prices available on the market even if they were not showing a clear picture of the actual market price. According to the price comparisons, MKSR thought that it were not any prices to compare with on shipping from SIPC to independent customers. Therefore the TP between Shell AB and SIPC were not considered as incorrect (RÅ 1991 ref. 107).

SAC find out, similar to MKSR, that the CUP was the most suitable method to use, since this was the only method available. The other methods were not considered, since the material needed for the other methods was not brought by the parties. The OECD report was the only guidance available, since the regulation, preparatory work and praxis did not give any direction regarding price setting. SAC found it necessary to estimate if the price setting by Shell AB had been an acceptable amount for an independent oil importer. The reason to this was that it was too difficult to set a correct TP, because of the multinational oil companies’ dominance on the market, which made the free price fixing limited and the price has also been unstable for the period (1976-
Appendix

The SAC used the prices available on the market such as cash prices, American list prices and British contracting prices, even if they were not showing a clear picture, when estimating the arm’s length price. In 1979, The Supreme Administrative Court (SAC) found out that the corporation had paid about 2.8 million SEK, which exceed the market price. On the other hand the corporation had decreased debiting on about 4 million SEK from 1977-78 and Shell was wondering if these charges could be settle against each other. The SAC decided that an overall judgment should be made and therefore a settlement was possible. According to the claim of the assessor the SAC thought that SIPC did not intend to set incorrect TP, because of the difficulty to set a correct price. SAC settlement led to that it was no reason for a tax surcharge for Shell AB, since the charges could be settled against each other (RÅ1991 ref. 107).
Appendix 2 – Article 9 OECD TP guidelines

“ARTICLE 9 – ASSOCIATED ENTERPRISES

1. Where

a. an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the taxes charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other” (OECD model tax convention, 2010, article 9).
Appendix 3 – English version of paragraph 19 chapter 14 of the Swedish Income Tax Act

19§ “If the income of a person (including a company) who carries on a business is reduced as a result of an agreement to terms which deviate from what would have been agreed between independent businessmen, the income must be computed as if those deviating terms had not existed, provided that

1) The person to whom the income is transferred is not subject to tax in Sweden in respect thereof;

2) there are reasonable grounds to assume that an economic relationship exists between the businessman and the person with whom the agreement was made; and

3) the circumstances do not suggest that the deviating terms have been agreed to for reasons other than the economic relationship” (SFS (1999:1229), paragraph 19 chapter 14).
Appendix 4 – Swedish version of paragraph 19 and 20 chapter 14 of the Swedish Income Tax Act

19§ Om resultatet av en näringsverksamhet blir lägre till följd av att villkor avtalats som avviker från vad som skulle ha avtalats mellan sinsemellan oberoende näringsidkare, ska resultatet beräknas till det belopp som det skulle ha uppgått till om sådana villkor inte funnits. Detta gäller dock bara om 1. den som på grund av avtalsvillkoren får ett högre resultat inte ska beskattas för detta i Sverige enligt bestämmelserna i denna lag eller på grund av ett skatteavtal, 2. det finns sannolika skäl att anta att det finns en ekonomisk intresseegemenskap mellan parterna, och 3. det inte av omständigheterna framgår att villkoren kommit till av andra skäl än ekonomisk intresseegemenskap. Lag (2007:1419).

20 § Ekonomisk intresseegemenskap som avses i 19 § anses föreligga om - en näringsidkare, direkt eller indirekt, deltar i ledningen eller övervakningen av en annan näringsidkares företag eller äger del i detta företags kapital, eller - samma personer, direkt eller indirekt, deltar i ledningen eller övervakningen av de båda företagen eller äger del i dessa företags kapital (SFS (1999:1229), paragraphs 19 and 20 chapter 14).
Appendix

Appendix 5 – Where different TP methods takes ground in the income statement

The different methods used for setting TP all takes a different focus on the income statement, which is shown by the table presented below (Skatteverket, 2011).

<table>
<thead>
<tr>
<th></th>
<th>Value</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales</td>
<td>350 CUP</td>
<td></td>
</tr>
<tr>
<td>Cost of goods sold</td>
<td>-123 CUP and cost plus method</td>
<td></td>
</tr>
<tr>
<td>Gross margin</td>
<td>227 RPM</td>
<td></td>
</tr>
<tr>
<td>Operating costs</td>
<td>-83 Cost plus method</td>
<td></td>
</tr>
<tr>
<td>Operating profit</td>
<td>144 Transactional profit methods</td>
<td></td>
</tr>
</tbody>
</table>
Appendix

Appendix 6 – Cost savings of using an APA

Schnorberger and Wingendorf, (2005), present an example on how the APA program can generate to a cost deduction for corporations over a period of five years. This table helps increase the understanding for why an APA can be seen as a healthy option for corporations which are a part of a MNE.

<table>
<thead>
<tr>
<th>Cost drivers of a transfer pricing system</th>
<th>Without APA (EUR, million)</th>
<th>With APA (EUR, million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>system implementation (IT-consulting, restructuring, tax consulting)</td>
<td>5.0</td>
<td>6.0</td>
</tr>
<tr>
<td>documentation or APA reporting</td>
<td>1.25</td>
<td>0.25</td>
</tr>
<tr>
<td>taxes, interest on income adjustments</td>
<td>100.0</td>
<td>0.0</td>
</tr>
<tr>
<td>penalties</td>
<td>25.0</td>
<td>0.0</td>
</tr>
<tr>
<td>mutual agreement or arbitration procedure</td>
<td>0.75</td>
<td>0.0</td>
</tr>
<tr>
<td>legal proceedings (tax court)</td>
<td>0.5</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Total costs</strong></td>
<td><strong>132.5</strong></td>
<td><strong>6.25</strong></td>
</tr>
</tbody>
</table>
Appendix

Appendix 7 – The four steps of an APA

The four distinct steps of an APA process which are to be found in EUJTPF.

1) A pre-filing stage/informal meeting where the likely success of an APA shall be discussed. Here the tax authorities shall be provided with the sufficient information by the corporation, such as a description of the transactions and activities and any potential roll-backs. If necessary the involved tax authorities shall consult with each other as quickly as possible.

2) After the informal meeting a formal application for the APA shall be filed as soon as possible with regards to the years that it shall cover. This application shall try to include all information that can be seen as relevant for the decision of issuing an APA. Such information includes, amongst other things, what method to use and why it is appropriate and how it can accurately reflect to the arm’s length distance for the future transactions. The application also often contains a functional analysis including the functions and activities, the risks and the employed assets. Exactly what information that shall be included varies from case to case. If necessary for the evaluation of the APA application the tax authorities have the right to ask for supplementary information.

3) After the formal application then it is time for an evaluation and the negotiation of the APA. It starts out with that the tax authorities shall contact each other to form a time table of the process of the APA. To minimize the burden on the corporations, the tax authorities shall only ask for relevant information. If the evaluation shall be different from the one provided by the corporation, then the tax authorities shall discuss this with the corporation. To end up with the best possible APA, the tax authorities and the corporation have to work together.

4) The negotiations and the evaluations shall eventually reach to a formal agreement of the APA which shall give certainty to the parties involved in the APA. Provided that the terms of this APA are met then the transactions included shall not be subject to different interpretations by different tax authorities (COM (2007) 71 final).
Appendix

Appendix 8 – A timetable for an APA process

1) Pre-filing stage/informal application – month 0. Here the tax authorities shall inform the corporation on what information that would be necessary and what method that would be appropriate.

2) Months 1-3, here the formal application is received by the tax authority and they shall provide for a timetable.

3) In months 4-12 the tax authorities conduct individual evaluations, where the corporations can be involved and consulted. In the end of this period each tax authority shall be able to present their position paper.

4) In month 13 the tax authorities evaluates each other’s position papers and if necessary obtains further information.

5) It is in months 14-16 where the tax authorities discuss with each other.

6) Month 17, here the tax authorities reach an agreement, and the corporation is consulted and indicates their agreement.

7) Finally in month 18 the APA is formally agreed between the tax authorities and the corporation receive assurance that the APA is acceptable (COM (2007) 71 final).
Appendix

Appendix 9 – SFS 2009:1289, the Swedish APA legislation

Lag (2009:1289) om prissättningsbesked vid internationella transaktioner.

Lagens tillämpningsområde

1 § Denna lag gäller besked om framtida prissättning av internationella transaktioner mellan parter som är i ekonomisk intressegemenskap (prissättningsbesked).

Ett prissättningsbesked är tillämpligt när statlig och kommunal inkomstskatt ska bestämmas.

Definitioner m.m.

2 § Termer och uttryck som används i denna lag har samma betydelse och tillämpningsområde som i inkomstskattelagen (1999:1229), om inget annat anges.

De termer och uttryck som används omfattar också motsvarande utländska företeelser om det inte anges eller framgår av sammanhanget att bara svenska företeelser avses.

3 § Vid tillämpningen av denna lag kan ett fast driftställe som en näringsidkare har i en annan stat än den där näringsidkaren hör hemma, anses vara en sådan part som avses i 1 §.

4 § Ekonomisk intressegemenskap anses föreligga om 1. en näringsidkare, direkt eller indirekt, deltar i ledningen eller övervakningen av en annan näringsidkares företag eller äger del i detta företags kapital, eller 2. samma personer, direkt eller indirekt, deltar i ledningen eller övervakningen av de båda företagen eller äger del i dessa företags kapital.

5 § Med stat avses även annan jurisdiktion som Sverige har ingått skatteavtal med.

6 § Denna lag ska tillämpas på motsvarande sätt i ett ärende där en ömsesidig överenskommelse om prissättning av internationella transaktioner kan ingås enligt det avtal som avses i lagen (2004:982) om avtal mellan Sveriges Exportråd och Taipéis delegation i Sverige beträffande skatter på inkomst.
Behörig myndighet

7 § Skatteverket lämnar prissättningsbesked och fattar övriga beslut enligt denna lag.

Ansökan om prissättningsbesked

8 § Näringsidkare som är eller kan förväntas bli skattskyldig enligt inkomstskattelagen (1999:1229) och som omfattas av ett tillämpligt skatteavtal får ansöka om ett prissättningsbesked.

Första stycket gäller även handelsbolag och andra delägarbeskattade juridiska personer om någon av delägarna är eller kan förväntas bli skattskyldig enligt inkomstskattelagen och omfattas av ett tillämpligt skatteavtal.

9 § Näringsidkare som innan en ansökan ges in vill diskutera förutsättningarna för ett prissättningsbesked och vad ansökan om prissättningsbesked bör innehålla, ska ges tillfälle till ett förmöte om inte särskilda skäl talar emot det.

10 § En ansökan om prissättningsbesked ska vara skriftlig och ska ges in till Skatteverket.

11 § En ansökan om prissättningsbesked ska innehålla de uppgifter som behövs för att ett prissättningsbesked ska kunna lämnas.

Regeringen eller den myndighet som regeringen bestämmer meddelar närmare föreskrifter om vilka uppgifter som ska ingå i en ansökan.

Förutsättningar för prissättningsbesked

12 § Prissättningsbesked får lämnas om
1. ansökan om prissättningsbesked inte avser en fråga av enkel beskaffenhet eller transaktioner av mindre omfattning,
2. de transaktioner som omfattas av ansökan kan bedömas fristående från andra transaktioner som inte omfattas av ansökan,
3. näringsidkaren lämnar de uppgifter som behövs för att en ömsesidig överenskommelse ska kunna ingås och ett riktigt prissättningsbesked ska kunna
lämnas,
4. information som behövs för att en ömsesidig överenskommelse ska kunna ingås och
dess tillämpning kontrolleras, kan erhållas från de stater som ska omfattas av den
ömsesidiga överenskommelsen, och
5. den i ansökan valda prissättningsmetoden, efter eventuella justeringar, bedöms
kunna ge ett pris som motsvarar vad sinsemellan oberoende parter skulle ha tillämpat.

13 § Prissättningsbesked får lämnas bara om
1. en ömsesidig överenskommelse om prissättning av internationella transaktioner har
ingåtts med en stat som anges i ansökan om prissättningsbesked och som Sverige har
ingått skatteavtal med, och
2. den ömsesidiga överenskommelsen överensstämmer med ansökan om
prissättningsbesked eller har godtagits av näringsidkaren.

Prissättningsbeskeden

14 § 1 ett prissättningsbesked anges hur den framtida prissättningen av vissa
internationella transaktioner ska ske samt de antaganden, villkor och övriga
förutsättningar som ska gälla för beskedets tillämpighet och giltighet.

Prissättningsbeskedet ska stämma överens med den ömsesidiga överenskommelse som
avses i 13 §.

15 § Giltighetstiden för ett prissättningsbesked ska bestämmas till mellan tre och fem
beskattningsår om det inte finns särskilda skäl att bestämma giltighetstiden till längre
eller kortare tid.

16 § Ett prissättningsbesked är bindande för Skatteverket avseende prissättningen av
de transaktioner som omfattas av beskedet och i förhållande till den som beskedet
avser, om inte annat följer av 18 eller 19 §.

Om prissättningsbeskedet avser ett handelsbolag eller en annan delägarbeskattad
juridisk person som tillämpar beskedet, gäller första stycket i förhållande till dess
delägare.
Underrättelse

17 § Näringsidkaren ska utan oskäligt dröjsmål underrätta Skatteverket, om 1. sådan omständighet som medför eller kan medföra att de antaganden, villkor och övriga förutsättningar som har angetts i prissättningsbeskedet inte uppfylls, eller 2. prissättningsbeskedet inte tillämpas.

Beslut om ändring eller återkallelse av prissättningsbesked

18 § Skatteverket får ändra ett prissättningsbesked, om näringsidkaren begär det eller om 1. något av de antaganden och villkor eller någon av de övriga förutsättningar som har angetts i beskedet i något väsentligt avseende inte uppfylls, eller 2. en författningsändring i något väsentligt avseende påverkar en fråga som beskedet avser.

En ändring enligt första stycket får bara göras om sådana förutsättningar som avses i 12 och 13 §§ är uppfyllda och näringsidkaren godtar ändringen.

19 § Skatteverket får återkalla ett prissättningsbesked helt eller delvis om 1. den ömsesidiga överenskommelsen som ligger till grund för beskedet helt eller delvis har upphört att gälla, 2. näringsidkaren har underrättat Skatteverket enligt 17 § 2 om att beskedet inte tillämpas, 3. näringsidkaren har lämnat uppgift om att beskedet inte har tillämpats enligt 3 kap. 19 eller 27 § eller 5 kap. 2 § andra stycket lagen (2001:1227) om självdeklarationer och kontrolluppgifter, eller 4. näringsidkaren eller delägarna i ett handelsbolag eller i en annan delägarbeskattad juridisk person har begärt omprövning av eller överklagat ett taxeringsbeslut enligt 4 eller 6 kap. taxeringslagen (1990:324) och har begärt att prissättningsbeskedet inte ska tillämpas på den fråga som begäran om omprövning eller överklagandet avser.
Utredning

20 § Näringsidkaren får uppmanas att inom viss tid komma in med de ytterligare uppgifter som behövs när ett ärende om prissättningsbesked ska prövas.

21 § Skatterverket får komma överens med näringsidkaren om när, hur och i vilken omfattning en kontroll av uppgifterna i ett ärende om prissättningsbesked kan ske.

Tillfälle att yttra sig

22 § Näringsidkaren ska ges tillfälle att yttra sig innan ärendet avgörs, om det inte är onödigt.

I fråga om näringsidkarens rätt att få del av uppgifter som har tillförl. ärendet genom någon annan än näringsidkaren själv och att få tillfälle att yttra sig över dem gäller bestämmelserna i 17 § förvaltningslagen (1986:223).

Ansökningsavgift

23 § Skatterverket ska i samband med att en ansökan om prissättningsbesked kommer in ta ut en avgift av näringsidkaren för den prövning som ansökan kan föranleda.

24 § Skatterverket får i ett enskilt fall besluta om befrielse från hela eller en del av avgiften, om det finns särskilda skäl för det.

Överklagande

25 § Prissättningsbesked och övriga beslut enligt denna lag får inte överklagas.

Övergångsbestämmelser

2009:1289

1. Denna lagträder i kraft den 1 januari 2010 och tillämpas på ärenden som kommer in efterikraftträdandet.

2. Ärenden som har inletts hos regeringen före ikraftträdandet men inte avgjorts, får överlämnas till Skatterverket för fortsatt handläggning enligt denna lag (SFS (2009:1289)).